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108-453

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 229.

PATRICK G. MEATH, APPELLANT,

vs.

THE COUNTY OF PHILLIPS, STATE OF ARKANSAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JUNE 15, 1880.

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1 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a regular term of the district court of the United States for the eastern district of Arkansas, begun and holden at the Federal court-room, in the city of Helena, on the 2d Monday in March, A. D. 1878, the same being the 11th day of said month, there was present and presiding Hon. Henry C. Caldwell, judge of said court, James Torrens, marshal of said district, and Samuel P. Delatour, clerk of said court, when, among other proceedings had, were the following, on the 12th day of March, 1878, a day of said term, viz:

U. S. dist. court, Dec'r 17th, 1877.

P. G. MEATH
against
PHILLIPS COUNTY.

On this day comes the complainant, by his solicitors, Gantt, Burrows, and McDowell, and files his bill of complaint, whereupon a summons is issued against defendant, returnable to the 3rd day of February, 1878.

Attest: S. P. DELATOUR, *Clerk.*

2 No. 37.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The president of the United States to the County of Phillips, greeting:

We command and strictly enjoin upon you, that, laying all other matters aside, and notwithstanding any excuse, you, and each of you, be and personally appear before the judge of our district court of the United States in and for the eastern district of Arkansas, at Helena, in chancery sitting, on the day of March, A. D. 1878, it being the second Monday next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by P. G. Meath, and to do further and receive what our said court shall have considered in that behalf. And this you are not to omit under penalty of what the law directs.

In testimony whereof Hon. Henry C. Caldwell, judge of the district court of the United States for the eastern district of Arkansas, has caused the seal of said court to be hereunto affixed, this 17th day of Dec'r, A. D. 1877, and in the 102nd year of our Independence.

[SEAL.] Attest: S. P. DELATOUR, *Clerk.*

3 N. B.—The defendant to enter its appearance in the above cause in the clerk's office of this court, on or before the 4th day of February, 1878, or the bill will be taken pro confesso against it.

S. P. DELATOUR, *Clerk.*

(Endorsed:) Duly served.
3703——1

Original bill.

In the circuit court of the United States for the eastern district of Arkansas.

To the judge of the circuit court of the United States for the district of eastern Arkansas.

Patrick G. Meath, of Memphis, and a citizen of the State of Tennessee, brings this his bill against Phillips County, a corporation having its situs in the State of Arkansas, created by the laws of said State, and being a political subdivision thereof, wholly within the eastern district of Arkansas, with its place of transacting business at Helena, Ark., and thereupon your orator complains and says that the County of Phillips, a cor-
4 poration duly established under the laws of the State of Arkansas, having its place of business at Helena, in the said County of Phillips, the same being the county seat of said county, during the year 1859, being fully authorized by various acts of the general assembly of the State of Arkansas, entered into a contract with your orator to do a large amount of work for the benefit of said county in the way of internal improvements, to wit, the building of levees for the protection and enhancing the value of the lands in said county. Your orator undertook and did do a very difficult piece of work for the said county, which said work previous contractors had failed to do by reason of the great difficulty in accomplishing the same.

Your orator, at great expense to himself, completed the said work: the same was inspected and received by the said county, and it executed to your orator various evidences of indebtedness therefor, to wit: The bonds of the said County of Phillips of various dates and amounts copied and made part of this bill.

Your orator shows that he is still the owner of a large amount of the warrants or bonds, to wit, to the amount of seventy-eight thousand dollars, which are due and unpaid, with the interest thereon from their several
5 dates at the rate of eight per centum per annum, which bonds or warrants are here to the court shown, and copies thereof made a part hereof.

The constitution of the State of Arkansas, at the time of the making of the contract herein set forth, provided "That the county court shall have jurisdiction in matters relating to county taxes, disbursements of moneys for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties." The general assembly, acting thereunder, passed an act, approved January 10th, 1849, authorizing the county courts of the various counties to order and enforce the construction of levees, and to levy and collect taxes to pay for the same.

Various acts of the general assembly passed thereafter provided and pointed out the manner in which the contracts for the building of levees by the county should be made, and the mode of levying and collecting taxes to pay for the same.

The act of the general assembly approved Feb. 10th, 1859, provided that "No warrant for building levees shall be issued until the claim of the party has been allowed and ordered paid by the county court."

All the bonds or warrants of your orator were so allowed and
6 ordered paid under the seal of the county, and they all bear the certificate of the county clerk that they were issued upon the allowance and order of the county court.

The act of the general assembly approved Jan. 15th, 1861, provided "That the holders of this county scrip, bonds, or warrants should present the same to the clerk of the county courts of the respective counties, who should issue to the holders the same amount of bonds, scrip, or drafts, bearing the same rate of interest, which interest should run from the date of the original scrip or bond."

Under this last act your orator presented to the said clerk of Phillips County a large number and amount of his said warrants or bonds, and the same were cancelled, and the new scrip, warrants, or bonds issued in their place.

The said registered or reissued scrip, warrants, or bonds are here to the court shown, and copies thereof are made a part hereof, and are in the words and figures *the* following, to wit:

7 PHILLIPS COUNTY, *Dec. 2nd*, 1861.

PHILLIPS COUNTY, STATE OF ARKANSAS.

[8500.

On the first day of April, 1862, at the office of the sheriff, acceptance waived, the levee treasurer of said county will pay to M. Murray, or bearer, the sum of five hundred dollars, with interest at the rate of eight per cent. per annum from date, until paid, in part payment for levee work done, according to contract in this the county of Phillips.

JOHN H. YERBY,
Levee Inspector, District No. 5.

No. 66.]

(On margin:)
Levee bond. $500. Issued upon allowance by county court.
EDWARD H. COWLEY, *Clerk*,
By JOHN W. STAYTON, *D. C.*

$2,500.] [No. 170.

STATE OF ARKANSAS,
County of Phillips, ss:

HELENA, ARK., *July 1st, A. D.* 1861.

Whereas, under and by virtue of the eleventh section of an act entitled "An act to amend an act entitled 'An act to provide for making and repairing levees in Desha and Phillips counties,'" approved the 16th day of February, 1859; and in compliance therewith T. A. Nelson has this day returned and delivered to me a levee bond for $5,000, issued to M. Murray by John H. Yerby, levee inspector of district No. 5, in said county of Phillips, on the 13th day of November, A. D. 1860, payable at the sheriff's office, in Helena, Arkansas, acceptance waived on the 15th
8 day of November, A. D. 1861, and bearing interest at the rate of eight per cent. per annum from date until paid:

Now, therefore, I, Edward H. Cowley, clerk of the circuit court, and ex officio clerk of the county court, within and for said county and State, under and by virtue of the authority in me vested by said act, and at the request of the said T. A. Nelson, do issue his renewal bond in part of said original, and on 15th day of November, 1861, at the office of the sheriff, in Helena, Phillips County, Arkansas, acceptance waived, the levee treasurer of said county will pay to T. A. Nelson, or bearer, the sum of twenty-five hundred (2,500.00) dollars, with interest thereon at the rate of eight per centum per annum, from the 13th day of November, A. D. 1860, until paid, in part payment for levee work, done according to said contract, in said county of Phillips, within and for said levee district No. 5.

Witness my hand as such clerk, as aforesaid, and the seal of said county court, at my office in Helena, Arkansas, this the day and date first above written.

EDWARD H. COWLEY, *Clerk*,
By JOHN W. STAYTON, *D. C.*

9 NOTE.—All other exhibits are of like tenor and effect as above, except as to number and amount.

Attest:

S. P. DELATOUR, *Clerk*.

Your orator shows that the original warrants here to the court shown, and copies of which *of which* heretofore set out and made a part hereof, amount to the sum of thirty-seven thousand nine hundred and fifty-five (37,955) dollars, which are due, with the interest thereon from the respective dates of each at eight per cent. per annum. A tabular statement of said original warrants, showing the number, date, when due, and the amount of each, is herewith filed and made a part hereof.

Your orator shows that the registered or reissued warrants, scrip, or bonds here to the court shown, and copies of which are herewith filed and made a part hereof, amount to the sum of $40,403.56 *dollars*, which are due, with interest thereon as shown by their face. A tabular
10 statement of same is herewith filed, marked "Registered warrants," showing the number, date, when due, and amount of each, and is made a part hereof.

Your orator shows that the said County of Phillips issued for levee work to various contractors scrip or warrants to the amount of six hundred thousand dollars, as orator is advised.

The County of Phillips did, through its county court, make one or two assessments for the payment of said scrip, bonds, or warrants, and the said assessments were so applied. Other than this the said county has made no levy or assessment for the payment of said scrip, bonds, or warrants.

The late war came on, and all efforts to pay the said warrants or scrip were suspended, and the matter stood in abeyance until after the reconstruction measures were adopted. Several acts of the general assembly followed, one, approved April 8, 1869, recognizing these warrants or scrip as a legal, binding indebtedness of the several counties, and requiring the county courts to provide for the payment thereof.

The County of Phillips adopted a temporizing policy, holding out hopes and promises to the holders of these evidences of indebted-
11 ness, but took no decisive steps to provide for the payment of the same.

The subject was frequently before the board of supervisors of Phillips County on the petition of the holders of the evidences of indebtedness.

The measure proved to be an unpopular one; the people of the county were adverse to the payment of these debts.

The county supervisors adopted dilatory tactics, put off the consideration of the matter from time to time, keeping up hope in the breast of the holders, but finally failed to grant any relief. There the matter stood until April 29, 1873, when an act of the general assembly was approved empowering, directing, and making it the duty of the supervisors of Phillips County, among other counties, to fund certain classes of indebtedness of the respective counties. It was made the duty of the supervisors to issue bonds of such counties respectively in any sum necessary to pay the outstanding indebtedness of said counties, the said bonds to become due in not less than three and not more than ten years, and to bear interest at the rate of eight per cent. per annum, from the date thereof, the principal and interest to be payable either at the treasury of the county issuing
12 the same, or such places in the city of New York as the board of supervisors in their discretion determine upon. The interest on said bonds to be paid semi-annually, on the 1st day of July and January of each year, said bond to be signed by the president of the board of supervisors, and attested by the county clerk, with the seal of the county attached, and the interest coupons shall be signed by the county clerk.

Two classes of indebtedness are provided for in said act, one class being unliquidated claims against the respective counties due at the time of the passage of the act. The other class are described in the said act as being duly issued orders or warrants upon any of the counties named, issued by the county, or any lawful claims against such county, the same being audited and allowed. It is provided that any person holding such claims, who presents and surrenders the same to the board of supervisors of the county for cancellation in sums to the amount of twenty-five dollars or more, and provided there be no money in the treasury to pay the same, and the said indebtedness shall have accrued before the passage of said act, shall receive
13 therefor the bonds of the county as above specified. This act is *peremptory*, not discretionary with the supervisors; when the second class of indebtedness *are* presented to them they had no option to refuse to receive and cancel such claims, and to issue the bonds of the county for the same as provided. When this second class of claims was presented to the supervisors, in sums of twenty-five dollars or more, the same having accrued before the passage of said act, and it being ascertained that there was no money in the county treasury to pay the same, it then became the imperative duty of the supervisors & clerk to issue the bonds of the county as provided in the said act.

Your orator now shows that on the 5th day of May, 1874, between the hours of 9 o'clock a. m. and 6 o'clock p. m., he appeared before the honorable board of supervisors of Phillips County, in open session, in the city of Helena, and presented and surrender to the said honorable board of supervisors the county warrants, bonds, or scrip hereinbefore set out, to have the same cancelled and reissued under the act of April 29, 1873; the amount of said warrants, scrip, or bonds being seventy-eight thousand dollars, which, together with the interest thereon accrued, and
14 was due long before the approval of the said act. Your orator

shows that there was no money in the treasury of Phillips County to pay the said claims, which fact was known to the members of the said board of supervisors, and shown by the public records of the county, the county having failed, after temporizing with the holders of these character of claims" and adopting dilatory measures, to levy or collect any tax to pay the same. The said board of supervisors having carefully examined said scrip, warrants, or bonds, and having found the same to have been duly issued (to your orator), upon allowance by the county court, and signed by the county clerk, with the seal of the county attached, and that there was no money in the treasury to pay the same, and that the said warrants were issued before the passage of the act of 1873, and that the same had been issued to your orator for work done by him for the said county of Phillips, passed the requisite vote for the cancellation of said claims or warrants, and the issuing the bonds of the county in lieu thereof, as the act of April, 1873, directed.

Your orator now shows that one member of the board of supervisors
15 dissented from the said action of the board, and after the taking of the vote, or the passing of the court on the matter, insisted on being heard by the other members of the board, and giving his reasons for his dissent. Your orator shows that by statute the board of supervisors were empowered to sit as a court only from 9 o'clock a. m. to 6 o'clock p. m. Your orator further shows that it was in the evening when the said board of supervisors passed on the said claims, and adjudged that the same should be cancelled, and new bonds issued therefor. The dissenting member of the board of supervisors continued to harang'e the balance of the court until the clock struck six, when he ceased, remarking that no record could be made of it that day; the board thereupon adjourned. Your orator shows, however, that although the action of the court was not put upon the records, yet an order was prepared showing the facts and the action of the court in the premises, which order was signed by the honorable president of the board of supervisors; a copy of the said order so signed is made a part hereof, and is made Exhibit A to this bill.

Your orator shows that on the next day, May 6, 1874, he again
16 appeared before the said board of supervisors and asked to have the said order entered on the minutes, and made part of the record, and the bonds of county issued to him in accordance therewith. The clerk of the county refused to enter the action of the court on the records, and your orator was unable to make any further progress in the matter. Your orator now shows that on the 16th day of May thereafter he applied to the supreme court of the State of Arkansas for a writ of mandamus to compel the county clerk of Phillips County, Samuel I. Clark, esq., to issue the bonds of the county in accordance with the adjudication of the said board of supervisors.

Your orator shows that an alteraative writ was issued on the 16th day of May, 1874, under seal of the supreme court of the State of Arkansas, directed to the said Samuel I. Clark, requiring him to show cause, if any he had, why a perenptory writ should not issue; a copy of said writ is herewith filed, marked "Exhibit B," as a part of this bill.

Your orator now shows that before the service of said writ the board
of supervisors of Phillips County was dissolved, and no further
17 action was taken in the premises. Under the present constitution

of the State of Arkansas, county courts are again instituted, but it is nowhere expressly provided that all the duties of the said board of supervisors shall devolve upon them. Their powers and duties, so far as contained in express terms, are to be found in the constitution & general laws. It is not expressly made their duty to issue the bonds authorized by the act of 1873, yet complainant submits that for the purpose of discharging the duties of said board of supervisors, the law, by necessary implication, clothes said courts with power to act in the room & stead of said supervisors. They openly & wantonly refuse to do so, however. They refuse anything looking to comp't's relief under the act 1873.

If entitled to relief against the def't as the successor of the said board of supervisors and as the proper agent & instrumentality for the performing their duties, then he asks relief in this aspect. He shows that when a judgment or decree is secured against a county, it is made the duty of the county court to draw a warrant on the treasurer therefor. Comp't is now informed that the county of Phillips insists that the evidences of debt held by him are not indebtedness of the county, but of the several
18 levee districts in which the work was done, from which said indebtedness arose, and that upon this subterfuge they are endeavoring to evade the payment. In this view of the case comp't submits that said levee districts were never incorporated and were subordinate divisions of the county, established for the better police and more economical management of those county affairs that pertained to the levee system; that it was a mere county agency. The county was the real principal with which comp't dealt. It is liable for the amount due him. How the county may apportion the bound'ries among the several levee districts is a question of no concern with the comp't. It is a matter that pertains to the internal regulation of the affairs of the county; as between him & the county, the whole county is his debtor. If comp't is, however, mistaken in this, then as all his dealings were with & through the county officers, and it is made the duty of the county through its county court or supervisors to levy and collect a tax to pay these warrants or scrip, and as they have been persistently urged to do their duty in the premises, and have not done so, then they have abused the trust reposed in them and rendered the county
19 responsible therefor. If your orator be mistaken in all these propositions, then it is clearly the duty of the county court to levy the requisite tax on the respective levee districts to pay these claims; and your orator insists that a tax ought to be levied for all the past years during which no tax has been levied and collected. The description, number, and appellation of each district interested in this suit is set out in the copies of the warrants filed herewith as a part of this bill. If the hon. court finds after disposing of all other questions that the said districts are proper parties to this suit, then your orator prays that they may be made such and required to defend. But he apprehends that no such necessity will or can arise. Your orator is advised that the county of Phillips will interpose the statute of limitation as a bar to this action. He is advised that there are circumstances under which a court of equity will not permit this to be done, and he charges that this is a proper case in which such p'erogative should be exercised, should it become necessary.

He charges that the duty of the county to levy and collect taxes to pay these claims, their failure to perform this duty, although urged to do

20 so, their dilatory actions and measures, their delusive promises and hopes held out to the holders of these claims, leading them to expect from day to day that the necessary relief would be given, presents such a case as would grossly shock the conscience of the court; such an action had by the county would be a gross fraud on the holders of these claims, and permitting the county to take advantage of its own wrong. Your orator is advised that a court of equity always considers and treats a thing as being done which ought to have been done, and which would have been done but for the wrong of the opposite party. Your orator now shows that his claims against Phillips County, commonly called levee bonds, are county bonds duly issued by the said county, and are in every sence a county debt. That the said indebtedness accrued before the 29th day of April, 1873, the date of the passage of the act entitled "An act authorizing certain counties to fund their outstanding indebtedness," of which Phillips County is one. That there is no money in the county treasury to pay the same; the amount presented and surrendered was in excess of twenty-five dollars. All
21 the conditions required by the law existed, and your orator ought to have had the bonds of the county in lieu of this indebtedness issued to him. The requisite action of the board of supervisors was had, but the certain other agents of the county, part of the board of supervisors, and the clerk of the county, whose duty it was to issue these warrants, prevented it from being done. Your orator did all the law required him to do, all he could do.

He is now advised that this honorable court will deal with this question upon the basis of the bonds having been actually issued in 1873. Your orator has no adequate remedy at law. He cannot sue upon the bonds of 1873, because they were wrongfully withheld by defendant. He is advised that a court of equity is the only tribunal that can deal with the question on the basis of the bonds having been actually issued as they should have been. Your orator is advised that he merely presented his scrip or warrants to be funded, there being no money in the treasury to pay the same; then it was the imperative duty of the board of supervisors and clerk to cancel his bonds and issue new bonds under the law, and that even
22 in that event he would be entitled to the relief he seeks, though the board of supervisors had absolutely refused to inspect or pass upon his claims or to order the new bonds issued, or to take any steps whatever; even then he is advised that this court would have treated the thing as being done and give orator a decree as though the bonds had been issued. But after the board of supervisors have inspected comp't's scrip on bonds and declared the same lawfully issued, and valid obligations of the county, and furthermore determined judicially that all the facts exist necessary to entitle comp't to have them cancelled & have bonds issued in their stead, as the act of 1873 directs, and actually ordered & adjudged that the old evidences of debt be cancelled and that the new bonds issue therefor, (which are the facts of this cause.) Comp't is advised that the wrongful action of the county & its officers in withholding said bonds will not be tolerated by this court. He is advised that such facts make a strong & proper case for equitable interferance, and that it will consider that done which ought to be done, & in that view compel relief. Comp't charges that there was collusion between the clerk of said court and one of the supervisors
23 by which it was agreed that such supervisor should so speak as to consume all the time until the hour of adjournment and then the

clerk was to refuse to record the order of the board in his favor, and thus compass his defeat, that this scheme was fomented and arranged by outside pressure brought to bear to defeat comp't's just claim. That it was a fraud perpetrated with a view of enabling the county to escape the payment of a just liability. The course thus pursued was not in the discharge of lawful duty, but in obedience to outside pressure, which wished to escape payment; it was repudiation, usurping the bench of justice and bar'ing the way to relief.

Premises considered comp't prays that the county of Phillips be made def't to this bill by copy as spe—and that it answer, &c.

He prays that he have a decree for the amount of his debt on the basis of bonds of the county of Phillips, issued May 5th, 1874, at which time he was entitled to the said bonds with interest from that date; if this cannot be done because the period of three years from May 5, 1874, has not expired, then he prays for a decree on the basis of bonds issued at
24 that date for his debt with interest from May 5th, 1874, but execution not to issue until the lapse of three years from date or for such period as the court may deem equitable. If this cannot be done, then he prays for a decree against the county on his original evidence of indebtedness with interest from the date of the same respectively, and that the county be precluded from relying on the plea of the statute of limitation.

If entitled thereto he prays for a peremptory order or writ of mandamus on the county court to carry out and perform the duties of said board of supervisors so far as it may be necessary to the complete relief of comp't under the act of 1873, and especially that it be required to issue the bonds which said board of supervisors wrongfully withheld from complainant. If entitled to relief in none of the former named, then he prays that the levee districts of Phillips County in which comp't did said work, and being numbers 5 & 6 of said county, be made parties def't and required to answer and defend, and that the county court be compelled by mandamus, or proper writ or order, to levy and impose a tax on said districts for all the
25 back years since 1862 and for the current year to pay said indebtedness; that he have a decree declaring that all legislation which provided any mode of payment became and was a part of his contract, and that no subsequent legislative act could impair or take away the same, and that he have such relief as may be proper to meet this phase of his case; if entitled to relief in none of the above modes, then he prays for a decree against each of said levee districts as the same may appear from his scrip or warrants to be due from said district for the amount due, with proper interest, and that the county court be required to impose a tax for the collection of the same. He prays for general relief.

GANTT, McDOWELL & BURROWS,
Sol'rs for Comp't.

Personally appeared before me P. G. Meath, comp't, &c., and made oath that the facts stated in the foregoing bill are true to the best of his knowledge, information, and belief.

P. G. MEATH.

Sworn & subscribed before me October 1st, 1877.

H. E. ANDREWS,
Clerk U. S. Circuit C't, W. D. T.

(Endorsed:) Filed Dec. 17, 1878. S. P. Delatour.

26 *Exhibit A to bill.*

Be it remembered, that on the 5th day of May, A. D. 1874, the hon'ble board of supervisors for Phillips County, in the State of Arkansas, met in open court, then in session in the city of Helena, in said State of Arkansas, and P. G. Meath, a resident of the city of Memphis, in the State of Tennessee, presented to the honorable board of supervisors bonds or levee scrip of Phillips County to the amount of seventy-eight thousand (78,000) dollars, with interest at eight per cent. from date of issue, for work & labor done by said P. G. Meath for said county; and we, the board of supervisors for said county of Phillips, having carefully examined said scrip or levee bonds and found the same to be duly issued upon allowance by the county court, signed by the clerk of said county court, and the county seal attached thereto: Now, therefore, in consideration of the premises, we, the board of supervisors of Phillips County, in the State of Arkansas, in compliance with an act of the legislature of the State of Arkansas, approved April 29, A. D. 1873, requiring the board of supervisors for Phillips & other counties to fund all claims that were audited and allowed & due previous to the passage of said act in
27 bonds bearing eight per cent. interest, having not less than three nor more than ten years to run to maturity—now, we, the board of supervisors, have this day allowed & adjudged the said levee bonds or scrip of P. G. Meathe to be funded, principal and interest, in bonds of Phillips County, bearing interest at eight per cent., payable semi-annually, having not less than three nor more than ten years to run to maturity.

Given under our hands and seal of the county this fifth day of May, A. D. 1874.

Q. K. UNDERWOOD,
President of the Board of Supervisors.

(Endorsed:) Exhibit A to bill.

28 *Exhibit B to bill.*

STATE OF ARKANSAS,
In the Supreme Court:

To Samuel I. Clark, county clerk of Phillips County:

You are hereby notified that Patrick G. Meath has filed in the clerk's office of the supreme court of the State of Arkansas his petition setting forth herein that he was and is now the owner and holder of a lawful claim against the county of Phillips, in said State, which claim had been duly audited and allowed by the board of supervisors of said county, for the sum of seventy-eight thousand dollars, with interest thereon at the rate of eight per cent. per annum, which claim is evidenced by certain warrants duly issued by said county, and commonly called levee bonds or scrip, said interest running from the date of issuance thereof; that said bonds or scrip was an indebtedness of said county which accrued before the 29th day of April, 1873, the date of the passage of an act authorizing certain counties to fund their outstanding indebtedness; that on the 5th day of May, 1874, at a regular meeting of the board of supervisors of said county, said bonds or scrip were presented to said board for

29 cancellation, and said board asked to issue or cause to be issued therefor the bonds of such county, to be issued in accordance with the provisions of said act of April 29th, 1873; that said board carefully examined his said claim, bonds, and scrip, and found and adjudged the same to be just and true; that said board, at said meeting, allowed and adjudged the same to be funded, principal and interest, in the bonds of said county, and that the bonds of said county be issued therefor to said petitioner; that thereupon, and notwithstanding said finding and adjudication of said board, you, the said Samuel I. Clark, as county clerk of said county, and whose duty it was to record said finding and adjudication and to issue said bonds under your hand and seal of said county, though directed by said board to do so, you have refused, and still do refuse and neglect to record said finding and adjudication, or to issue said bonds, or any of them, or to affix your signature or said seal thereto.

Therefore, in accordance with the prayer of said petitioner, you are hereby commanded to be and appear in our said supreme court, on the first day of its next term, to be holden at the court-house in the city of Little Rock, on the first Monday of June, 1874, and answer and
30 show cause, if any you can, why a peremptory writ of mandamus shall not issue to you, compelling you to record said finding and adjudication of said board of supervisors, and to sign, seal, and issue said bonds in accordance with said finding; and hereof fail not.

Witness my hand and seal of said supreme court at Little Rock, this 16th day of May, 1874.

[SEAL.] N. W. COX, *Clerk.*

The defendant is notified that the petitioner herein expects an answer to this petition to be filed with the clerk of supreme court, at Little Rock, within ten days from service hereof.

GANTT & KIMBALL,
Att'ys for Pet'r.

MEMORANDA.

List No. 1 gives the Nos. and amounts of bonds issued by the county court clerk of Phillips County, Ark., upon the surrender of levee inspectors' certificates.

Total amount.....	$40,403 56

List No. 2 gives the Nos. and amounts of levee inspectors' certificates, countersigned by the county court clerk of Phillips County, Arkansas, with the county seal attached thereto.

Total amount.....	$37,955 00
Grand total.....	78,358 56

All the property of P. G. Meath.

31 *No. 1.—List of warrants to bonds, &c., of the county of Phillips, State of Arkansas, in lieu of the certificate of the district levee inspectors, the same being now held and owned by P. G. Meath.*

Nos.	Amount. Cts.	Nos.	Amount. Cts.
577	$500		$15,350
579	500	171	2,500
573	500	580	500
578	500	661	5,353 56
274	500	957	5,000
275	500	345	200
172	2,500	271	500
281	500	125	500
129	250	820	1,000
279	500	127	500
575	500	821	1,000
576	500	320	500
49	250	124	500
282	500	29	500
270	500	52	500
280	500	30	500
276	500	19	1,000
273	500	19	250
277	500	272	500
356	100	572	500
278	500	823	500
169	2,500	5	250
574	500	170	2,500
581	500		
300	250		
	15,350	Total	$40,403 56

(Across the face:) Exhibit of statement of registered warrants made an exhibit.—List marked No. 1.

32 *No. 2.—List of levee scrip of certificates of levee inspector, now held and owned by P. G. Meath.*

Nos.	Am'ts.	Nos.	Amounts.
66	500		16,030
	500	70	500
25	500	51	500
42	500	67	500
60	500	107	100
59	500	175	100
18	4,630	106	100
D'f't dist. = 6	5,000	116	100
45	500	93	100
201	100	112	100
84	100	125	100
148	100	114	100

197	100	113	100
115	100	209	100
20	600	100	100
206	100	194	100
185	100	174	100
126	100	145	100
109	100	199	100
128	100	75	100
143	100	159	100
183	100	77	100
79	100	122	100
72	500	196	100
74	500	147	100
	16,030		19,630

(Across the face:) Exhibit to bill. List of original warrants.

33	19,630		24,430
34	500	17	5,000
43	500	21	625
55	500	223	50
71	500	224	50
44	500	50	500
172	100	61	500
152	100	110	100
49	500	123	100
184	100	78	100
97	100	101	100
146	100	89	100
155	100	98	100
87	100	203	100
134	100	139	100
120	100	58	500
207	100	56	500
205	100		
173	100	List marked No. 2...	$32,955 00
24	50		
227	50		
231	50	List marked "A,"	
228	50	herewith accompanied	5,000 00
140	100		
137	100		
153	100		
119	100		
	$24,430		37,955 00

34 *Phillips County, State of Arkansas, original county warrants, bonds, or scrip.*

No	Date.	When due.	Amount	District.
200	Dec'r 2d, 1861	April 1st, '62	$100 00	No. 5
108	" " "	April 1st, '62	"100 00	" 5
144	" " "	April 1st, '62	"100 00	" 5
158	" " "	April 1st, '62	"100 00	" 5
151	" " "	April 1st, '62	"100 00	" 5
630	Dec'r 23rd, 1861	April 1, '63	"100	" 6
406	Nov'r 7th, 1861	April 1, '63	"200	" 6
629	Dec'r 23rd, 1861	April 1, '63	"100	" 6
405	Nov'r 7th, 1861	April 1, '62	"200	" 6
432	Nov'r 23, 1861	April 1, '62	"500	" 6
733	Dec'r 26, 1861	April 1, '63	"500	" 6
639	" 23rd, 1861	Jan'y 1, '63	"500	" 6
104	June 13th, 1861	April 1, '62	"100	" 5
103	" " 1861	April 1, '63	"100	" 6
78	" 5th, 1861	April 1, '62	"500	" 6
76	" " "	Jan'y 1, '62	"500	" 6
77	" " "	April 1, '62	"500	" 6
75	" " "	Jan'y 1, '63	"500	" 6
642	Dec'r 23rd, 1861	April 1, '63	"100	" 6
212	" 3rd, 1861	April 1, '62	"100	" 5
			$5,000 00	

35 In U. S. dist. court, Febr'y 4, '78.

P. G. MEATH)
against)
PHILLIPS COUNTY.)

Comes defendant, by J. Trieber, his solicitor, and files his answer and demurrer to bill of complaint herein.

Attest:

S. P. DELATOUR, *Clerk.*

Demurrer.

In the district court of the United States for the eastern district of Arkansas, at Helena.

PATRICK G. MEATH, PLAINTIFF,)
vs.) Demurrer.
PHILLIPS COUNTY, DEFENDANT.)

Now comes the defendant, by her solicitors, and demurs to plaintiff's complaint in case the same were true, which the defendant in no wise admits, and for reasons assigns—

1st. That there is no equity in the bill.

2nd. That if plaintiff is entitled to any relief he has a full, complete, and adequate remedy at law.

3rd. That the complaint fails to show any liability on the part
36 of defendant, the County of Phillips.

4th. That this court has no jurisdiction to grant the relief prayed for in an original proceeding, viz, the writ of mandamus.

5th. That the complaint on its face shows that the claims are barred by the statute of limitation, & nothing set up therein is sufficient to authorize a court of equity to remove that bar.

6th. That the bill is otherwise vague and insufficient.

JACOB TRIEBER,
Sol. for D'f't.

I certify that the above demurrer is in my opinion well founded in point of law.

JACOB TRIEBER,
Sol. for Def't.

Sam. I. Clark, county judge of Phillips County, states on oath that the above demurrer is not interposed for delay.

SAMUEL I. CLARK.

Subscribed & sworn to before me this 4th day of Febr'y, A. D. 1878.
S. P. DELATOUR, *Clerk.*

Filed Feb'y 4, 1878. S. P. Delatour, clerk.

37 *Answer to complaint.*

In the district court of the United States for the eastern district of Arkansas. In equity.

PATRICK G. MEATH, COMPLAINANT, *vs.* PHILLIPS COUNTY, DEFENDANT. } Answer to charges of fraud.

In answer to that portion of plaintiff's complaint charging fraud against the defendant, the defendant denies that there was any combination or conspiracy, understanding or agreement, either express or implied, between one of the members of said board of supervisors and the clerk thereof, or with or among any other parties, to prevent the legal & free action of said board of supervisors in anything connected with said warrants, scrip, &c., of plaintiff's, as alleged in his complaint. Defendant, in order to fully answer the charge of fraud & collusion made by plaintiff, and to advise this court of the acts and doings of plaintiff, states the following facts, which it is ready and willing at all times to sustain by ample proof, viz:

Defendant charges that there was a combination & conspiracy
38 formed by said plaintiff herein & one Q. K. Underwood, then the president of the board of supervisors of said county of Phillips, for the illegal, fraudulent, & corrupt purpose, by illegal, fraudulent, & corrupt means, of getting the bonds of defendant herein issued to the said plaintiff in lieu of his scrip, &c.

That just before the meeting of the board of supervisors on said day the said Q. K. Underwood told C. A. Walterhouse, the then acting deputy county clerk of defendant, that a very important matter would be brought before said board that day; that Meath, the plaintiff herein, would present his scrip, warrants, &c., to the board for the purpose of having them funded & new bonds issued in lieu of them; that a majority of the board would be in favor thereof, and that he, the said Underwood, wanted him, the said Walterhouse, to be ready to sign the bonds that night, at the same time questioning the said Walterhouse as to his authority to sign his principal's, the county clerk's, name, and stating also that Meath, the plaintiff herein, had the bonds prepared and ready for signature.

Shortly thereafter the board met, & said Underwood called up the matter of Meath's claim for action by the board. G. W. Holibough, one

of the members of said board, not being advised until that time
39 of said claim, or the nature thereof, asked for time to examine the same, whereupon the board took a recess until 4 o'clock p. m. of that day.

Before the reassembling of the board that day, the said Underwood again approached the said Walterhouse & told him that Meath, the plaintiff herein, would give him (the said Walterhouse) the sum of $100 cash, and the further sum of $1,000 in bonds, if he, as such deputy clerk, would sign & issue to the said Meath the said bonds as aforesaid, which the said Walterhouse refused to do, unless so ordered by the board of supervisors when duly assembled & in session.

Before the reassembling of the board, the said Walterhouse informed the said Holibaugh of the attempts made by Underwood, as Meath's agent, to bribe him, and the said Holibaugh having satisfied himself by examination of said claims that the same were fraudulent and of no validity as demands against the said county, the defendant herein, and fearing that the third member of said board, viz, Sim Hill, might have been bribed and corrupted, he immediately, upon the reassembling of the board, took the floor and addressed the other members of the board until after 6 o'clock p. m., the time
40 fixed by law for the adjournment of said board; & thereupon Ben. Barrow, the deputy sheriff in attendance upon said court, declared the said meeting adjourned until the next day.

Thereupon, and after said adjournment, the said Underwood attempted to pass the motion moved by him previously, but the other members of the board knowing that the session had been adjourned for that day refused to take any further part in the proceedings.

The defendant is enabled from the facts herein set forth to & does charge that the said Underwood, as president of said board, was induced to favor plaintiff herein by fraudulent, corrupt, and immoral means, by bribery and reward, or the offer thereof, and for the purpose of influencing the said Hill, the other member of said board, the said Meath & Underwood promised him a large sum of money & bonds if they should be able to have their measure passed & the bonds issued to the said Meath, intimating at the same time that they had the sum of $8,000 for that purpose.

With these statements, which the defendant is ready and willing to substantiate by proof, it submits that charges of fraud & collusion come with bad grace from this plaintiff, & having fully answered said charges
41 of fraud, the defendant asks to be dismissed hence with her reasonable costs.

JACOB TRIEBER,
Sol. for Def.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

S. I. Clark, county judge of Phillips, states on oath that he verily believes the statements in the foregoing answer to be true.

S. I. CLARK.

Subscribed & sworn to before me this 4th day of February, 1878.

S. P. DELATOUR, *Clerk.*

(Endorsed:) Patrick G. Meath vs. Phillips County. Answer to charges of fraud. Filed February 4th, 1878. S. P. Delatour, clerk.

42 *Decree of court, entered March 12th, 1878.*

P. G. MEATH
against
PHILLIPS COUNTY.

This day appeared the parties, complainant and defendant in this cause, by their respective solicitors, and submitted the demurrer heretofore interposed herein to the original bill of complaint, and the court being sufficiently advised, it is considered that the said demurrer is well taken on all the grounds thereof, and it is ordered and decreed that the same be sustained; and the complainant declining to amend the said original bill in any material matter not reached by the said demurrer, it is further ordered and decreed that the said original bill of complaint be, and the same is hereby, dismissed, and that the complainant pay the costs of this cause not heretofore paid by him, for which execution may go.

To all which action of the court in these premises, in the sustaining of the said demurrer and the dismissing of the said bill of complaint, the complainant did except, and in open court and in presence of the attorney and solicitor for the defendant, notice of which application
43 the said solicitor and attorney did acknowledge in open court, the complainant did pray an appeal to the Supreme Court of the United States from the said order and decree of this hon. court, which appeal so prayed is granted and allowed; and it is further ordered that the clerk of this court, in making up the record for revision of the said Supreme Court, do omit from the transcript all the copies of the papers spoken of as scrip bonds or warrants, except one of each class, there being only two classes of these evidences of debt embraced by the bill, it being agreed that there is all that is needed of these exhibits for the presentation of the questions raised by the demurrer, and the court so likewise considering, all of which is finally ordered and decreed.

44 *Appeal bond.*

Know all men by these presents that we, P. G. Meath, as principal, and D. E. Myers, surety, are held and firmly bound unto the county of Phillips, State of Arkansas, in the full and just sum of five hundred dollars, to be paid to the said Phillips County, in the State of Arkansas, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by *by* these presents. Sealed with our seals and dated this 12th day of March, A. D. 1880.

Whereas lately, at a term of the district court of the United States for the eastern district of Arkansas, at Helena, Arkansas, in a suit depending in said court between P. G. Meath, citizen of the State of Tennessee, complainant, and the County of Phillips, Arkansas, a citizen of Arkansas, defendant, a judgment was rendered against the said P. G. Meath, complainant, and the said P. G. Meath having prayed an appeal from the decree rendered in said cause, and which appeal was granted on the 12th day of March, A. D. 1880:

Now, the condition of the above obligation is such that if the said

45 P. G. Meath shall prosecute his appeal and answer all damages and costs, if he fail to make *he* his appeal good, then the above obligation to be void; else to remain in full force and virtue.

P. G. MEATH. [L. S.]
D. E. MYERS. [L. S.]

Approved March 12, 1880.

HENRY C. CALDWELL,
U. S. Dist. Judge, East. Dist. Ark.

(Endorsed:) Filed March 12th, 1880. S. P. Delatour, clerk.

46 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Samuel P. Delatour, clerk of the United States district court for the eastern district of Arkansas, at Helena, hereby certify that the above and foregoing 45 pages is a true and perfect transcript of the proceedings in the cause of P. G. Meath against Phillips County, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal at Helena this 12th day of March, A. D. 1880.

[SEAL.] S. P. DELATOUR,
Clerk United States District Court.

47 The United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal duly prayed and allowed by the district court of the United States for the eastern district of Arkansas, at Helena, wherein P. G. Meath is appellant, and the county of Phillips, in the State of Arkansas, is appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Henry C. Caldwell, judge of the said district court, this 21st day of September, A. D. 1880.

HENRY C. CALDWELL,
District Judge of U. S. for East. Dist. of Ark.

48 *Service.*

I have served the within citation by delivering into the hands of M. T. Sanders, county judge of Phillips County, Arkansas, and J. Trieber, esq., attorney of record in the court below, a true and correct copy of the same at Phillips County, in the eastern district of Arkansas, upon this 24th day of September, 1880.

JAMES TORRANS,
U. S. Marshal,
By L. C. STEPHENSON,
Deputy.

Filed October 5th, 1880.

SAMUEL I. CLARK, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Arkansas, at Helena, Arkansas:

On this 15th day of October, 1880, personally appeared before me, a clerk of the United States district court in and for the district
49 aforesaid, L. C. Stephenson, a resident of Helena, Arkansas, to me known, who, being duly sworn, states that he, as deputy U. S. marshal for the eastern district of Arkansas, served the citation of which the above and foregoing is a copy, upon the persons named in the return thereon as stated in the same.

LOUIS C. STEPHENSON.

Sworn to and subscribed before me this 15th day of October, 1880.
[SEAL.] SAMUEL I. CLARK,
Clerk U. S. Dist. Court.

(Indorsed:) Supreme Court U. S. 1880, October term, No. 798. Meath vs. Phillips County, State of Arkansas. Citation & service. Filed 25 October, 1880.

(Indorsement on cover:) No. 229. Patrick G. Meath, appellant, vs. Phillips County, in the State of Arkansas. E. Arkansas, D. C. U. S. Filed 15th June, 1880.

108-553

SUPREME COURT OF THE UNITED STATES.

NO. 229.

P. G. MEATH,

Appellant,

VS

PHILLIPS COUNTY,

Appellee.

BRIEF AND ARGUMENT FOR APPELLANT.

S. P. WALKER

For Appellant.

MEMPHIS, TENN.:
Jones, Huhn & Co., Printers, 12 Jefferson Street.

1883.

SUPREME COURT OF THE UNITED STATES.

NO. 229.

P. G. MEATH,
Appellant.

vs.

PHILLIPS COUNTY, ARK.,
Appellee.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT.

On the 17th day of December, 1878, in the Circuit Court of the United States, for the Eastern District of Arkansas, the appellant, Meath, filed his bill against the appellee, the county of Phillips, averring that on the 29th day of April, 1873, he was the owner and holder of $78,358.56, principal, of the levee bonds or warrants of said county; that on that day the legislature of the State passed an act requiring the board of supervisors of said county to fund certain classes of indebtedness, including the class held by appellant, into eight per cent. coupon-bonds of the county, interest payable semi-annually, and the principal maturing in not less than three nor more than ten years; that on the 5th day of May, 1874, appellant appeared before the board of supervisors, then in session, presented his warrants, and applied for the bonds that the board was required by said act to issue to him; that the warrants were examined by the board, adjudged by it to be the genuine evidences of county indebtedness, and ordered to be funded into county bonds, as provided by said act of April, 1873, and that the immediate issue of said bonds was prevented by the fraudulent conduct of the clerk and one of the members of

said board, and subsequently, by the refusal of the clerk to enter the judgment and order of the board on its minutes.

Anticipating the defenses, much of the bill is devoted to showing that the warrants held by appellant were issued to him in payment for levees built by him under contracts with the county, constituting a county indebtedness, and not merely an indebtedness of the districts in which the levees were built.

The prayer of the bill is, that the county be required to deliver its bonds, in accordance with the legislative act, and the judgment of the board of supervisors, and in the alternative, for such money-decree and mandatory process as plaintiff might be entitled to.

On the 4th day of February, 1878, the county filed a demurrer to the bill, assigning the five grounds of demurrer appearing on the record at page 14.

At the same time the county filed an answer, entitled an "Answer to charges of fraud," in which the allegations of fraudulent combination between the clerk and one member of the board is denied, and in which it is also denied that the board of supervisors had, by the requisite vote, adjudged in favor of plaintiff, on his demands against the county, or had ordered the bonds to be issued to him, as alleged in the bill.

Record, 16 and 17.

On the 12th day of March, 1878, the cause was heard *on the demurrer*, and the bill dismissed—the judgment of dismissal reciting that "it is considered that the said demurrer is well taken on all the grounds thereof."

ASSIGNMENTS OF ERROR.

The court erred in holding—

1. That there was no equity in the bill.
2. That plaintiff's remedy at law was full, complete and adequate.
3. That the bill showed no liability on the part of the defendant county.

4. That the court had no jurisdiction to grant the relief prayed for in an original proceeding ; and,

5. That the plaintiff's cause of action was barred by the act of limitations.

BRIEF.

1. The equitable jurisdiction of the court can be maintained, (1), upon the plaintiff's right to a specific delivery of the bonds of the county.

Eames v. Home Ins. Co., 94 U. S. 621;
Taylor v. Merchants Ins. Co., 9 How. 405.

(2), Because, under the several acts of the legislature, under which the levee contracts were made, the plaintiff's remedy, in an ordinary action at law, was embarrassed and doubtful, if such action was maintainable at all; and, (3), on the features of the bill seeking to avoid the bar of the statute of limitations (if plaintiff should fail to maintain the alleged judgment of the board of supervisors in his favor) by the circumstances shown in the bill; and also seeking to deprive the defendant of the benefit of a fraudulent combination of its officers, by which plaintiff had been defeated of the judgment of said board in his favor, and of the act of the legislature, of April 29, 1873.

2. Under the facts stated, the constitution of the State, and the legislative acts, the defendant county, and not the levee district, is the debtor of the plaintiff.

Jordan v. Cass County, 3 Dill. 185;
County of Cass v. Johnston, 95 U. S. 360;
Davenport v. County of Dodge, 105 U. S. 237.

3. The bill alleges that on the 5th of May, 1874, the board of supervisors adjudged in favor of the validity and genuineness of the scrip held by plaintiff, and ordered the bonds of the county to be issued to him, under the act of April, 1873.

This judgment concludes the county against all the defenses to the merits relied upon in its demurrer. It was the judgment of a court of competent jurisdiction, not to be collaterally attacked, and conclusive of the county's liability, as against all of the defenses set up by the demurrer.

Rev. Stat. of Ark., 1874, §§ 574, 575, 595, sub. §§ 1 & 6.

4. Plaintiff's right of action was not barred by the statute of limitations.

Rev. Stat. of Ark., 1874, § 4128.
Bennett v. Worthington, 24 Ark., 487.
Carroll v. Board of Supervisors, 28 Miss., 38.

ARGUMENT.

I.

The second ground of demurrer did not meet the necessities of the defendant's case. That assignment of demurrer was intended, no doubt, as an objection to the jurisdiction of the court, as a court of equity. But there are many instances of concurrent jurisdiction in courts of law, and equity; and the existence of an adequate remedy in one, does not necessarily preclude the jurisdiction of the other.

But although this assignment of demurrer is defectively stated, as we submit, yet as the question of equitable jurisdiction is one that may be made at any time, and by the court of its own motion, we proceed to its consideration.

Upon the case made by the bill, the jurisdiction of a court of equity may be supported upon either of three grounds:

1. The bill seeks a specific performance of the obligation of the county to issue its bonds, under the act of April, 1873, and the judgment in plaintiff's favor rendered by the board of supervisors on the 5th of May, 1874.

After that judgment, and by the terms of the judgment, (record 10), the county still had the option, as it had under the legislative act, to fix the maturity of the bonds within the prescribed limits—not less than three, nor more than ten years from date—and might, to suit its convenience and lessen the burden of payment, have made them mature in installments, and at different dates. Neither argument nor citation of authorities is necessary to show that if plaintiff, under the case made by the bill, was entitled to coupon-bonds maturing at three or ten years after date, or at any intermediate period, he could only get the full measure of his rights in a court of equity, under a decree for specific performance. But it may be contended that the three years from May 5th, 1874, having already elapsed when the bill was filed, plaintiff would have secured full relief by a money-judgment, on the basis of bonds issued at that date, and running to maturity at three years. Our reply is: (1), that in an action at law, on that theory, the plaintiff would have had no means of showing that his cause of action was mature, the option of the county, as to the date of the maturity of the bonds not having been exercised; (2), if the period for which the bonds should run had been definitely fixed by the judgment of the board, still the bonds would run for that period from the date of their issue, and not from the date of the judgment—even if issued under a compulsory decree in this cause, they would run three years from the date of such issue; and (3), a court of equity would have jurisdiction if, under the circumstances shown by the bill, it should be deemed that the plaintiff had the option to claim a money-decree, on the basis of bonds issued on the 5th of May, 1874, and maturing at three years from date.

In *Eames v. Home Ins. Co.*, 94 *U. S.* 621, a bill in equity was filed upon a contract for fire insurance, the contract being made out by correspondence and parol testimony, and the loss having occurred before the policy was issued, and before the bill was filed. The jurisdiction in equity was objected to; but this court, upon a prior decision of its own and other precedents, overruled the objection, holding that notwithstanding the plaintiff might

have sued at law, he had a right to come into a court of equity to compel delivery of the policy; and that being there, the court would not put him to the delay of another suit on the policy, but would, after adjudging his right to the policy, award him a money-decree as if he already had it.

2. The equitable jurisdiction may be supported on another ground: By direction of the various acts of the legislature, (which acts will be more specifically noticed presently), the portions of the county to be immediately benefited by the levees were divided into levee districts, which were designated by numbers, the cost of the levees in each district to be paid by an annual tax to be laid by the county, on the lands of each, the minimum valuation per acre of the lands, and the minimum and maximum rate per acre of taxation being prescribed. Without going further into the details of the legislation, we submit that, whilst it is true that the plaintiff holds the obligations of the county, they are obligations attended with such special features as could be more adequately dealt with by a court of equity than by a court of law, proceeding under the strict forms of the common law.

In *Davenport v. County of Dodge, County of Cass v. Johnson, and Jordan v. Cass County*, much doubt was entertained whether a court of law could properly deal with a case of special liability, such as is here involved. After much argument, and with some hesitation, the court concluded that it could. The effort there, was to sustain the remedy at law. We think there can be no serious difficulty in sustaining the jurisdiction in equity, of the case of a creditior not entitled to general execution, but confined to a special fund and mode of payment.

3. At this point, and on the question of equity jurisdiction, we only suggest further—(1), the features of the bill alleging a course of conduct on the part of the defendant presenting equitable considerations for enjoining it from relying on the statute of limitations; and, (2), the equities growing out of the alleged fraudulent combination of certain officers of the defendant county, by which plaintiff was defeated of the benefit of the judgment of the board of supervisors in his favor—a ground of equity

and of equitable jurisdiction that the defendant admitted, (though we do not claim that the admission binds it on the jurisdictional question), by filing an answer thereto in support of its demurrer.

II.

The third and principal ground of demurrer was, that the plaintiff by his bill failed to show any liability on the part of the defendant county.

Before discussing that question, we submit that on this point the demurrer is too general; that it goes to the whole bill, but fails to reach the entire case made by the bill, and should for that reason have been overruled.

Story's Eq. Pl. §443.

Looking at the bill alone (apart from the statutes of the State) the liability of the county is undoubtedly made out. The defense rests upon the proposition that the legislative acts under which the levee contracts were made, the levees built, and the levee warrants issued, show that the purpose of the legislature was to make each levee district the debtor for the cost of building its own levees; and that the relation of debtor and creditor was not intended as between the county and builder. From all of which, if conceded, it does not follow that the bill should have been dismissed. Confessedly, the plaintiff and the county were the contracting parties. The levee districts are not, and never were corporations—could never sue or be sued. They could be reached only through the county; and that the county was not the debtor of the plaintiff, and therefore not suable at law, would seem to afford the more reason for resorting to a bill in equity to ascertain and adjudicate the plaintiff's rights, to be followed by such mandamus proceedings as would be appropriate to those rights.

But we confidently submit that this ground of demurrer is not well taken. In all essential features the question is identical with that presented and adjudicated in Davenport v. County of Dodge, 105 U. S. 237—a decision of such recent date as to re-

quire no review at our hands, leaving us under the necessity only of showing that it controls the case at bar.

The bill alleges (record, 2,) that the contract for the building of the levees was made between the plaintiff, on the one side, and the county, on the other; that they alone were the contracting parties. The then constitution of the State provided: "The "county court shall have jurisdiction in matters relating to "county taxes, disbursements of moneys for county purposes, "and in every other case that may be necessary to the internal "improvement and local concerns of the respective counties."

Constitution, Art. VI, Sec. 9.

The levee districts were local subdivisions of the county, and not corporations, and having no power to make, enforce, or perform a contract.

Appendix, Act of Feb. 16th, 1859.
Amended by Act of Jan. 15th, 1861.

The county was required to levy, collect and disburse the taxes for the payment of the levee scrip; and it was expressly provided that this duty could be enforced by mandamus.

Act of Feb., 1859, supra, secs. 13-18.
Act of Jan., 1861, supra, secs. 1-2.
Act of April 8th, 1869, secs. 1-2, (Appendix.)

The contractor and builder were not entitled to a warrant on the levee treasurer, until his claim had been allowed and ordered paid by the county court.

Act of Jan., 1861, sec. 7.

And the bill alleges (record, 5.) that the warrants sued on were issued by the order of the county court, on claims presented to, and audited and allowed by, it.

Throughout these acts there is no variation from the idea that the building of levees was a local county improvement, to be provided for by the county, and the cost thereof to be raised by a special tax to be levied by the county on the lands immediately benefited by the work. And without going further into the details of the legislation, we submit that in every essential

particular the case is parallel with those of *Davenport v. County of Dodge, County of Cass v. Johnson, and Jordan v. Cass County, supra.*

It is clear that under the several legislative acts contained in the Appendix hereto, the holder of a levee warrant could in the State court proceed, in the first instance, by mandamus. to compel the exercise of the taxing power therein conferred on the county. And a denial of the right to proceed to judgment in the Federal court, as a preliminary step to the remedy by mandamus, would operate to deprive the non-resident citizen of his remedy in a forum to which he certainly has the right to resort.

It distinctly appears from the bill that the warrants sued on, in addition to having been originally issued by order of the county court, were again adjudged to be county obligations by the board of supervisors, on the 5th of May, 1874.

That board was authorized to audit and allow all claims against the county.

Rev. Stat. of Ark. (1874) §595, sub-sec. 6.

Its judgments are judicial acts, subject to be reviewed, reversed, or affirmed, like those of any other court.

Carnall v. Crawford county, 11 Ark. 604.

Speaking of just such a fiscal county agency (the board of police), the Supreme Court of Mississippi said:

"Their judgment, like that of any other court having exclu-
"sive jurisdiction over the subject-matter and person affected,
"must be treated as final and conclusive, until reversed or vaca-
"ted in some mode known to the law."

Carroll v. Board of Police, 28 Miss. 38-48.

Nor do we understand this court, so far as the questions here involved are concerned, to hold differently in the case of Wall v. County of Monroe, 103 U. S. 74. That case turned on the question, whether the warrants were "negotiable instruments,
"in the sense of the law merchant, so that, when held by a *bona*
"*fide* purchaser, evidence of their invalidity or defenses availa-
"ble against the original payee would be excluded." It was held that the transferee took them subject "to all legal and

equitable defences that existed to them in the hands of such payee;" and that the county could maintain a set-off, arising on an independent matter existing at the time the bonds were issued. The warrants were not impeached, or invalidated; they were allowed, on the one side, the set-off, on the other.

"Within the limits of their power, as conferred by statute, "the county courts, in determining the amount due a creditor "of the county, in the absence of fraud or mistake, bind the "county; but the county court cannot bind the county by or- "dering a claim to be paid which is not made a county charge "by statute," etc.

Shirk v. Pulaski County, 4 Dill. 209.

Which is an assertion of the general principle that the decision of any tribunal within the scope of its conferred powers is binding, until reversed in the prescribed mode, or impeached for fraud or mistake.

Dillon on Mun. Corp. §502, note.
Carroll v. Board, etc., 28 Miss. 38.
Kendall v. U. S., 12 Pet. 524.

A principle that was not at all impugned in the case of Wall. v. County of Monroe, supra.

In so far, therefore, as the bill seeks to compel the delivery of bonds under the act of 1873, we concede that the county could rightfully put a clause into the bonds showing that the obligation was a special one, to be discharged only in the special mode pointed out in the legislative acts; and that if the case should result in a money decree against the county, it should be a special decree, to be satisfied by a tax on the levee district, in the manner pointed out by the legislative acts.

III.

We concede it to be unquestionably true that the Federal courts cannot, under the peculiar wording of the judiciary act, award the writ of mandamus in an original proceeding. It is as certainly true that, in any case of proper equitable cognizance, these courts may, by a mandatory decree, compel the exe-

cution and the delivery of any instrument or obligation to which the plaintiff shows himself entitled.

IV.

In reply to the defense of the statute of limitations, we submit:

1. The county court, and its successor, the board of supervisors, being the tribunal appointed by statute to pass upon the validity of plaintiff's demands, having audited and ordered payment thereof, the statute has no application from that time forth.

Carroll v. Board of Supervisors, 28 Miss. 38.

In that case the court says: "If the statute should be held "to apply at all to claims against the county, it must be insisted "on at the proper time, *pending the controversy before the board* "*of police*, which was not done, or if done, was not regarded." (P P. 49-50.) Again, (at page 50,) it is held that the statute of limitations as to actions on judgments could not apply; that that clause of the statute applies only where execution could be sued out. "No execution can issue on a judgment against the board "of police. Such judgment is enforced by a warrant on the "treasury; and the board undertake, by directing the warrant "to issue, to cause the money to be placed in the treasury for "the payment of the sum specified in the warrant."

2. The suit being based upon the audit and allowance of the claim by the county court (of which the warrant upon the treasury is evidence merely), there is no clause or section of the statute specifically applicable to a suit thereon, unless it be the limitation of ten years for suits on judgments.

Gantt's Dig., 1874, secs. 4125–4129.

3. If the period of ten years, prescribed for suits on judgments be adopted, the right of action was not barred at the time of the passage of the act of April 29, 1873. (Appendix, 20.)

The warrants were payable November 15, 1861, and April 1st, 1862, and the operation of the statute was suspended from December 1st, 1862, to March 16, 1864.

Bennett v. Worthington, 24 Ark., 487.

So that at the time of the passage of said act, complainant not only held "duly issued orders or warrants," but such as were not then barred by limitations; and upon the passage of the act became entitled, of right, to the bonds of the county, there being no money in the treasury to pay him.

Section 3.

4. The said act of April, 1873, section 3, provided that "any person holding a duly issued order or warrant upon any "of the counties named, issued by the county, * * * shall "upon the surrender of the same to the board of supervisors "of the county, for cancellation, receive therefor the bond of "such county, to be issued as provided herein."

We do not contend that this affects the statute of limitations in any action based on the original warrants to recover a money judgment; but do insist that there is no statute of limitations applicable to plaintiff's right to demand and receive bonds under that act, or to a bill in equity to compel the delivery of such bonds. That the bonds should have been special, showing on their face that they were issued in behalf of the districts respectively in which the levees were built, does not affect the question.

5. Lastly: The bill avers, that on May 5th, 1874, the board of supervisors adjudged in favor of plaintiff, on the demands here sued on; and from that time to the date of filing the bill, December 17, 1878, no statutory bar could accrue. Without regard to the weight of its action, as a judgment, the board was the fiscal agency of the county, (Gantt's Dig. 1874, § 574, *et seq*), and had full power to waive the defense of the statute of limitations, as it might have done in an action on the warrants, by simply failing to plead the statute.

It is to be noted that the act of April 8, 1869, § 3, does not create a bar by limitation, upon failure to present within the prescribed period, but merely limits the amount of the annual tax levy to the amount so presented.

S. P. WALKER,
for Appellant.

APPENDIX,

CONTAINING FOUR ACTS OF THE LEGISLATURE OF ARKANSAS.

ACTS OF 1858.—No. 138.

AN ACT to provide for making and repairing Levees in Desha and Phillips Counties.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas,* That for the purpose of establishing a just and equitable system of making and repairing levees in the counties of Desha and Phillips, it shall be the duty of the county courts of the counties of Desha and Phillips, at the next term thereof, to be holden after the passage of this act, to divide all that portion of overflowed lands in each of said counties, into not less than four, nor more than seven districts; *Provided,* That in laying out said districts, that no one district shall include lands on both sides of either the Arkansas or White rivers.

SEC. 2. *Be it further enacted,* That said county courts of Desha and Phillips, shall each for their respective counties, appoint three freeholders, who shall reside respectively in the district for which they are appointed, whose duty it shall be to make a report of all lands situate in their respective districts, which are subject to overflow, and that upon such report being made, they shall immediately report a list of such lands to the clerk of the county court, to be by him filed and safely kept; *Provided,* That no lands shall be embraced in such report that are not subject to reclamation by a general system of levees in said districts.

SEC. 3. *Be it further enacted,* That the county court shall

also appoint, for each one of the districts laid off as aforesaid, one levee inspector, who shall hold his office until his successor is elected and qualified as hereinafter provided for, and the person so appointed, as soon as may be practicable, shall be served with notice of his appointment, which notice shall be prepared by the clerk of said court, and served on such inspector by the sheriff of said county; and the person so appointed and notified shall, without delay, qualify and enter into bond as hereinafter provided.

SEC. 4. [*Be it further enacted,*] That it shall be the duty of each inspector, appointed under this act, to perform all the duties herein prescribed, and upon the performance thereof, shall be entitled to the sum of three dollars per diem for each and every day he is actually engaged in such service, proof thereof to be made by the affidavit of the said inspector, to be paid out of the levee funds of his district.

SEC. 5. *Be it further enacted*, That in case of death, removal or refusal to qualify, or any other disability of any person appointed or elected inspector, to perform and discharge the duties of his office, then, and in that event, the county court of said county shall appoint some suitable person to fill the vacancy or unexpired term of such deceased, removed, or disqualified, or delinquent inspector, and any person who shall fail or refuse to serve as levee inspector, when duly elected or appointed as herein prescribed, (unless for good and sufficient cause shown to the court) shall be fined for any such refusal or failure the sum of fifty dollars, to be applied to levee purposes in the district for which he was so appointed or elected inspector, and that in all cases of fine imposed upon any inspector for such refusal or failure, the sum may be collected from him by the sheriff of said county, on execution, as in other cases of a judgment at law.

SEC. 6. *Be it further enacted*, That before any such levee inspector shall act as such, he shall enter into bond to the State of Arkansas, for the use and benefit of the district for which he was appointed or elected, in the sum of three thousand dollars, which bond shall be conditioned, that he will faithfully do and perform

all the duties incumbent upon him by law, or the order of said county court, as levee inspector, and shall also make and subscribe and file in the office of the clerk of said court, an affidavit that he will faithfully perform all the duties required of him by law, and the order of said county court, as such levee inpector, which said bond is to be approved by the presiding judge of said county court, either in term time or in vacation.

SEC. 7. *Be it further enacted*, That it shall be the duty of such levee inspector, so appointed or elected as aforesaid, to lay off such levees as will in his judgment be needed for the protection (from overflow) of his district, to be built at a suitable distance from the river.

SEC. 8. *Be it further enacted*, That in all cases the selecting agents for each district shall, before they act as such, file in the office of the clerk of the county court aforesaid, an affidavit that they will faithfully and fairly execute their duties, respectively, as such selecting agents, and in case of a vacancy in such board of selecting agents, by death or otherwise, such vacancy shall be filled by said county court in term time or by the presiding judge thereof in vacation, by appointment.

SEC. 9. *Be it further enacted*, That it shall be the duty of each levee inspector, to let out to the lowest bidder, the building and repairing levees in their respective districts, after public notice thereof having been given by setting up notices at three of the most public places in said district, in which the work is to be let out, at least fifteen days next preceding the day of such letting said work.

SEC. 10. *Be it further enacted*, That it shall be the duty of said inspectors to require of each person who may undertake the building or repairing of levees in said districts, a bond with good security, conditioned for the faithful performance and execution of the contract, said bond to be in the sum equal to the estimated value of the work contracted for; said bond to be made payable to the State of Arkansas, for the use and benefit of the levee district in which is situated the contemplated levee or repairs, to be recovered before any court of competent jurisdiction.

SEC. 11. *Be it further enacted*, That said inspectors shall,

during high water, when the river is against the levees, examine the levee in his district twice a week, and oftener if necessary, or upon emergency or danger to such levees (of which such levee inspectors are made by this act the exclusive judges), may, by requisition in writing, call out any number or all the slaves subject to road duty, belonging to persons most immediately interested within the district, to repair or prevent any damage to the levee, and whenever the owners of any such slaves fail or neglect to furnish such slaves, as required by the inspector of his district, then such owner shall pay five dollars per day for each slave not sent (for each day), according to the requisition of the inspector, said amounts to be due to the said district, to be recovered before the county court of said county, or any justice of the peace of the township in which such levee district is situate, upon an account made out in the name of the State of Arkansas, for the use and benefit of such district; and the certificate of such levee inspector shall in all cases be sufficient to entitle the said district (as aforesaid) to recover, unless disproved by other competent testimony; and all persons sending their slaves, according to such requisition, shall be allowed one dollar per day for each slave sent, from the time they leave the plantation until they return, to be certified to by the levee inspector, in which certificate shall be stated the number of days or parts of days each person is entitled to, and such certificate shall be received by the sheriff or collector of the levee tax (hereinafter provided for), in payment of so much of the holder's levee tax; *Provided*, That any person's cultivable lands that lie wholly between the river and the levee and are not protected by the levee, shall be exempt from such requisition and levee tax.

SEC. 12. *Be it further enacted*, That all levees to be made in pursuance of the provisions of this act, shall be made as follows, to-wit: all trees, stumps and logs shall be removed from the foundation of the levee; the dirt necessary to build said levee shall not be taken nearer than six feet of the base of said levees; all levees shall be at least thirty inches above high water mark, and in width, shall be seven feet base to every foot in heighth, and shall be made as wide at the top as the levee is high.

SEC. 13. *Be it further enacted*, That there shall be levied and collected in each of the districts, laid off by the county court in accordance with this law, an annual levee tax upon all lands that will be benefited from overflow by levees, and the rate of such tax shall be fixed by the county court of Desha and Phillips counties (each for their respective county) annually, commencing with the year 1859, of not less than one-fourth of one per cent. nor more than two per cent. upon the assessed value of said lands; *Provided*, That no land taxed for levee purposes to raise such tax, shall be valued at less than ten dollars per acre, and each levee inspector for his district, shall assess the lands in his district, which are or shall be subject to taxation for levee purposes under this act, and shall make out a correct list of his assessment, and certify the same under oath, and shall deliver the same to the clerk of the county court of said county, and the said clerk shall ascertain and state upon the tax-book the amount of levee tax chargeable upon each tract of land according to the value of said lands assessed, in the manner aforesaid, and in accordance with the order of the county court of said county, fixing the rates of levee taxes; and the sheriff of said county shall collect said taxes in accordance with the provisions of this act, and said levee inspectors shall be the sole judge of what lands will be benefited by levee work, and he shall embrace in his assessment all such lands as he may deem of that description or character.

SEC. 14. *Be it further enacted*, That in all cases where persons in said counties have already given *bonuses* or advanced money, for the building or repairing, or have built or repaired levees, for which they have not been reimbursed or had pay since the first day of August, 1858, that upon the certificate of the levee inspector of the proper district or districts, in which such work was done, certifying to the amount thus given or valuation of the work performed, that such person or persons shall be entitled to a credit for the amount so certified, in the way of their levee tax.

SEC. 15. *Be it further enacted*, That at the next general election after the passage of this act, there shall be elected by the

qualified voters of each levee district, one levee inspector for each levee district, who shall hold his office for the term of two years, and until his successor is elected and qualified.

SEC. 16. *Be it further enacted*, That the county court shall appoint a treasurer, and shall take a bond that he will faithfully perform his duties and for the safe keeping of the levee fund of each levee district created by this act, and shall receive the levee fund when collected by the sheriff, and he shall execute bond in twice the amount of the levee tax likely to be collected, which shall be approved by the county judge. Said treasurer shall make out and report at each regular term of the county court, a statement of all moneys in his hands, and to what district it belongs; and as a compensation, shall be allowed one and one-half per centum upon all the money that comes into his hands.

SEC. 17. *Be it further enacted*, That the levee inspector of any district shall be authorized, whenever the authorities of the State shall deem proper, to let out a contract for the construction or repair of any levee in such district, to enter into contract for the construction or repair of any such levee, and the said inspector shall be authorized to use any of the funds of such levee district to perform such work, and shall be fully authorized as such inspector, to receive from the proper officer of the State, the compensation allowed by said contract from the State therefor, which shall be for the benefit of the levee fund of such district.

SEC. 18. *Be it further enacted*, That the assessment and levy of said taxes shall be made by the county court by an order of said county court, designating the amount per acre and the time of payment of said tax, which order shall be published for four weeks, in some newspaper in this State, and a copy thereof to be put up at some public place in each levee district in the county, and it shall not be necessary, in any such order of assessment and levy, to designate said lands, either by numbers or other description, but upon the making and publication of such order, that all lands in said district, subject to said tax, are assessed at the rate and payable at the time specified, the same shall be considered as duly and legally assessed and said tax duly levied thereon, and such order being duly recorded by the clerk of the

county court, it shall be his duty to attach a copy of the same to each tax-list of the State and county revenue, which he shall make out annually, and extend the said tax against all lands subject thereto, contained in said list, in a separate column, to be provided for this purpose; and said county court shall have power, and it is hereby made their duty, on the first Monday in March next, or the first term thereafter, to adjust the assessment and levy of said tax, by hearing and deciding all questions relating to the improper assessment and taxation of any lands, or the omission to assess and tax any, legally taxable under the provisions of this act, and make addition to, or deduction from the taxes as charged in such list, upon any land or against any person whatsoever; and such correction and deduction may be made upon the affidavit of the person applying therefor, stating the grounds upon which it is claimed, or any other information or evidence, satisfactory to the county court, whose decision shall be final. Said county court shall make a list of all such corrections and deductions, and deliver the same to the clerk, who shall certify and attach a copy thereof to each tax-list made out by him, whether the same shall have been previously delivered to the collector of the State and county taxes, or otherwise, so reform such lists as to make them conform thereto, and the collector of taxes shall collect and account for the same, in the time and manner prescribed by this act or order of said county court.

SEC. 19. *Be it further enacted*, That the taxes so levied shall constitute a lien upon the land, to the same extent that lands are liable for State and county taxes; and it shall be the duty of the sheriff of said county to collect the taxes, so assessed, within the time prescribed by this act, in the same manner in which the State and county taxes are now collected, and, in case of a failure of the owner or owners of lands in said district, to pay the taxes due upon his or their lands, within the time prescribed, it shall be the duty of the sheriff or collector of said county, to expose said lands to public sale on the day prescribed by law, for the holding of the next succeeding term of the circuit court of said county, at the door of the court house of said county, and sell the same (or so much thereof as may be necessary and sufficient to pay said tax, and all costs of conveyance thereafter

to the purchaser,) or to the highest bidder for cash, and to execute a deed therefor to the purchaser, in the same form, or to the same effect, as is now used upon sale of lands for other taxes; which deed shall vest in the purchaser a full and complete title in fee-simple to the land sold, and shall be received as *prima facie* evidence that the prerequisites to said sale have been complied with, and the title of said purchaser, under said deed is perfect; and that the title of the owner of said lands, and all persons interested therein, is invested, by said deed, in such purchasers; the said sheriff may continue said sale from day to day, until the whole of said lands, liable to such sale, shall be sold, and such sale be made between the hours of ten o'clock, a. m., and five o'clock, p. m.; if no person shall offer and bid the amount of taxes due on any lot, section, or other legal subdivision of land, such lot, section, or other legal subdivision or tract of land shall be struck off to and purchased by the treasurer of the levee fund of said county, for the use and benefit of the district in which such lot, section, or subdivision or tract of land may be situate, who shall receive a deed therefor, made to him as treasurer and to his successor in office, for the use and benefit of said levee fund of such district, and the treasurer shall be authorized to sell and dispose of the same, at private sale, to any person, for the amount of the said purchase money and costs and taxes from the time they were paid; *Provided*, The owner of any land sold or conveyed as aforesaid, may redeem the same from the purchaser thereof, at any time within two years after the date of the sale thereof, on the payment of the amount of such sale, and all subsequent taxes paid thereon, with interest thereon at the rate of fifty per centum per annum. In case of a failure, by said sheriff or collector, to collect or perform any duty required by this act, he shall be liable for the whole amount so failed or neglected to be collected, and twenty-five per cent. thereon, to be collected from him, by action of debt, in any court of competent jurisdiction, which action may be brought and prosecuted to final judgment, and execution, either against him alone, or against him and his securities upon his official bond; which sum, when so collected from him, (or him and his secu-

rities), shall be applied to such levee fund of such district, to be used in the construction or repair of levees.

SEC. 20. *Be it further enacted*, That for the faithful performance of the duties of the sheriff, prescribed to him in this act, he shall give bond, to the satisfaction of the county court of said county, conditioned that he will faithfully perform the duties prescribed to him in this act; and, as a compensation, said sheriff shall receive two and one-half per centum for collecting said taxes. Said sheriff shall pay over all of said levee fund by him collected, to the levee treasurer of said county, and on failure to do so, may be proceeded against in the name of the State of Arkansas, for the use of the proper district, by motion, as in cases of a failure to pay over money collected on State taxes.

SEC. 21. *Be it further enacted*, That if any person or persons feel themselves aggrieved by the running of the levee through his or their lands, such person shall, within ten days after the location of such levee, give notice to the levee inspector of the district in which such levee is laid out, who shall immediately give notice to the sheriff of the county to summon five freeholders or householders of the county, who have no interest in the land through which the levee is to run, and who are not related to or connected by marriage with the owner thereof, who shall, after being duly sworn, proceed to examine the premises of complainant, and after taking into consideration all the advantages and disadvantages of said levee to said proprietor, shall award to him such damages, if any, as they may deem just and right, all of which shall be reduced to writing, signed by the jury, and returned by the sheriff to the county court of said county, and there entered of record, which shall be final. Should such jury not assess damages, said inspector shall proceed with said work without further delay, but should said jury accord damages to said complainant, it shall not be lawful for said work to proceed until said levee inspector shall have paid or tendered to said complainant the amount so assessed; and upon such payment or tender, it shall be lawful for such work to proceed without further delay; and the sheriff, for summoning said jury, shall be allowed and paid the usual fee now allowed for summoning a jury in

other cases, to be paid by complainant, if he is allowed no damages, and if damages are allowed, then to be paid out of the levee fund of the proper district; and that each of the jurors shall be allowed one dollar for each day he is actually engaged in such service, to be paid as provided for in cases of sheriff; and any juror who shall fail or refuse to obey the summons of the sheriff, and act as such, unless for good cause shown, shall forfeit and pay to the levee fund of said district, the sum of ten dollars for each refusal or failure to act as such juror, to be recovered before any justice of the peace in said county, to be sued for in the name of the State of Arkansas, for the use of the proper district and levee fund in such district.

SEC. 22. *Be it further enacted*, That if any owner or owners of land shall represent unto the county court of said county, at its session in March next after the assessment, or the proper term the next year thereafter, that all, or any portion of his lands that are between the levee and the river, so as to be without the protection by said levee, the said county court, on due proof thereof, and of the ownership of said land, and the number of acres being so between the levee and river, shall cause the sheriff to give credit to such owner for the levee tax on such number of acres, or in case the taxes shall have been paid, shall cause the same to be refunded to such owner or owners, out of said levee fund of said district in which the lands so wrongfully taxed are situate.

SEC. 23. *Be it further enacted*, That no injunction or process shall issue to stay or suspend the construction or repairing of any levee or levees, or any part thereof, unless the party or parties suing out the same, shall first enter into bond, with good and sufficient security, to be approved by the chancellor or judge granting the same, and payable to the State of Arkansas, for the use of the levee district in which the levee work or repairs sought to be enjoined are situate, conditioned for the payment of such damages and costs as shall be sustained by reason of the suing out and executing such injunction or other process, in case he, or she, or they shall fail in the prosecution of the same, which bond, when the same shall become forfeited, or the condition thereof broken, shall be sued on in any court having com-

petent jurisdiction of the same, for the use and benefit of the proper levee district.

SEC. 24. *Be it further enacted*, That the clerks of the county courts of Desha and Phillips counties shall, each for their respective county, keep a full and accurate record of all proceedings and transactions in relation to levees, and so forth, of said levee inspectors, they, the said levee inspectors, being hereby required to report their proceedings to the clerk; and the said clerk, as a compensation for his services in keeping such record, shall receive such fees as he is now entitled to by law for similar services, to be paid to him out of the funds respectively for which such services are performed.

SEC. 25. *Be it further enacted*, That it shall be the duty of the county court of said counties of Desha and Phillips, in laying off levee districts, to cause a record thereof to be made upon its record, and to designate each district by a number.

SEC. 26. *Be it further enacted*, That when any person shall be entitled to draw money out of the treasury for levee work done, or be otherwise entitled to money out of the levee fund, it shall be the duty of the levee inspector to draw his draft upon the treasurer for the amount, which may be in the following terms, to-wit:

STATE OF ARKANSAS, }
COUNTY OF ———, }

The levee treasurer of said county pay to ——— ———, or order, the sum of ——— dollars, out of any money in the treasury belonging to levee district No. ——, this —— day of ———, 18—.

A—— B——, *Levee Inspector*
of District No. ——

SEC. 27. *Be it further enacted*, That whenever it shall be made to appear to the county court of said counties of Desha and Phillips, that a further tax is not necessary in any district, then a further levee tax shall not be levied in such district, until it shall appear that a further tax is necessary.

SEC. 28. *Be it further enacted*, That the above mentioned as selecting agents, shall each receive the sum of three dollars per

diem, for each and every day they may be engaged in selecting lands, to be paid out of the levee fund of their district, by order of the county court to be made for that purpose.

SEC. 29. *Be it further enacted*, That the corporate limits of the town of Napoleon be, and is hereby exempt from the operation of this act.

SEC. 30. *Be it further enacted*, That a special term of the county courts of Desha and Phillips counties, shall be holden on the first Monday in January, or as soon thereafter as notice can be given by the presiding judge thereof, whose duty it shall be to carry out the provisions imposed by this act.

SEC. 31. *Be it further enacted*, That this act take effect and be in force from and after its passage.

APPROVED, 16th February, 1859.

ACTS OF 1860-61.—No. 106.

AN ACT to amend an Act entitled An Act to provide for Making and Repairing Levees in Desha and Phillips Counties, approved the 16th day of February, 1859.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That in addition to the duties required of the selectmen in the act entitled "an act to provide for making and repairing levees in Desha and Phillips counties," approved the 16th day February, eighteen hundred and fifty-nine, it shall be the duty of the selectmen of their respective levee districts, on or before the first Monday of March of each year to select and appraise, under oath, all lands in their respective districts, which are subject to levee tax, under the act to which this is an amendment, and make out a true and correct list thereof, together with the value per acre, and file the same in the office of the clerk of the county court.

SEC. 2. *Be it further enacted*, That it shall be the duty of the county assessor of Desha and Phillips counties, each for

his county, immediately after the filing of lands so selected and appraised, to procure a certified copy thereof, from the clerk, and make fair assessment lists therefrom, arranging the names of each owner of the lands so levee-taxed in alphabetical order, the numbers and description of the lands, and the value of each tract as put upon the same by the selectmen, which shall be arranged in a list with the owners' names in the order aforesaid; and said assessor shall foot up the appraised value of each tract of land, and extend the same in the line with the owner's name, and file the same in the clerk's office, on or before the first Monday in June, next thereafter, and the clerk shall proceed with such list, as now required by the act to which this is an amendment, in regard to assessments made out by the inspectors.

SEC. 3. *Be it further enacted*, That it shall be the duty of the assessor, when he shall discover that the selectmen have omitted to select and appraise any lands which are properly taxable for levee purposes, to notify the selectmen of the levee district in which such lands may be situated, whose duty it shall be to appraise such lands and file a list thereof in the clerk's office, and the assessor shall proceed with such list in the same manner as now required of him in regard to the original lists filed.

SEC. 4. *Be it further enacted*, That the assessor for Desha county shall receive as a compensation for his services, the sum of five dollars for every day he is actually engaged in preparing said assessment, to be paid out of the levee funds of the several levee districts in Desha county.

SEC. 5. *Be it further enacted*, That the county courts of Desha and Phillips counties, shall, in the month of March, eighteen hundred and sixty-one, elect a levee treasurer for each of said counties, who shall hold his office until their next general election, and until his successor is duly elected and qualified.

SEC. 6. *Be it further enacted*, That the qualified voters in the levee districts of said counties, shall, at the next general election, and every two years thereafter, elect a levee treasurer

for each of said counties, and three selectmen for each levee district, who shall hold their respective offices for two years, and until their successors are elected and qualified, and should a vacancy occur, it shall be the duty of the county court to elect some suitable person to fill the vacancy.

SEC. 7. *Be it further enacted*, That no levee inspector hereafter shall be allowed to issue any levee scrip, drafts, or bonds, unless ordered by the county court; and all scrip, drafts, or bonds, issued as aforesaid, shall be numbered.

SEC. 8. *Be it further enacted*, That the collector of the levee taxes, each for his county, on or before the second Monday of February, in each year, shall make out and file in the office of the clerk of the county court, a list of all lands upon which a levee tax has been assessed, and not paid, setting forth the owners' names, and a description of the land, as the same are described in the tax book, and charge thereon the taxes due for the correct and preceding years.

SEC. 9. *Be it further enacted*, That the collector shall cause a copy of such lists to be set up at the court-house door of his county, and published in some newspaper printed in this State, at least four weeks before the third Monday of March thereafter, to which list he shall attach a notice that the whole of the several tracts of land in such list, or so much thereof as shall be necessary to pay the levee taxes charged thereon, will be sold at the court-house door of his county, on the third Monday of March thereafter, unless such taxes and costs be paid before that time, and shall file such list in the office of the clerk of the county, and the clerk shall record such list in a book provided for that purpose.

SEC. 10. *Be it further enacted*, That the collector for his county, or his deputy, shall attend at the court-house door of his county, on the third Monday of March, in conformity with the notice aforesaid, and then there, at and after the hour of ten o'clock, in the forenoon of said day, proceed to offer for sale separately, each tract of land contained in such list, on which the taxes and costs have not been paid, and the person offering at such sale to pay the taxes and costs charged on any tract of land for the least quantity thereof, shall be the purchaser of

such quantity, and said sale shall continue from day to day until the whole thereof be sold or offered for sale.

SEC. 11. *Be it further enacted*, That the person purchasing any tract of land, or any part thereof, shall forthwith pay the collector the amount of the taxes and costs charged thereon, and on failure so to do, the collector shall immediately offer such land again for sale, in the same manner as if no such sale had taken place.

SEC. 12. *Be it further enacted*, That the clerk of the county court, or his deputy, shall attend all sales of lands for levee taxes in his county, and shall make a record thereof, in a book to be kept for that purpose, therein describing the several tracts of land as they are described in the list, stating in separate columns the levee taxes and costs, and how much of each tract was sold, and to whom sold.

SEC. 13. *Be it further enacted*, That the collector shall make out and deliver to the purchaser of any lands sold for levee taxes as aforesaid, a certificate of purchase, therein describing the lands sold, as the same was described in the tax book, and stating therein the amount of the levee taxes and costs for which the same was sold, and that payment has been made, which certificate may be assigned.

SEC. 14. *Be it further enacted*, That no deed shall be made by the collector, for any lands sold as aforesaid, until the expiration of one year from and after the sale.

SEC. 15. *Be it further enacted*, That at any time after the lapse of one year from the time of such sale for taxes, if the land shall not have been redeemed, the collector shall, on the request and on the production of certificate of purchase, execute and deliver to the purchaser, his heirs or assignee, a deed of conveyance for the tract of land, or part thereof, that shall have been sold as aforesaid, which deed shall be acknowledged and recorded as other deeds of conveyance.

SEC. 16. *Be it further enacted*, That if the owner of any lands that may have been sold for the payment of levee taxes, his agent or attorney, within twelve months from the time of the sale thereof, shall pay, or tender to the purchaser of such lands, his legal representative, or lawful agent, the amount of taxes

paid thereon, together with the costs of such sale, and fifty per centum on the whole amount paid by such purchaser, and shall pay or tender to such purchaser, or his legal representatives, the true value of any improvements made on such lands, such lands from that time shall be discharged from such sale, and shall thereafter be assessed in the name of such owner.

SEC. 17. *Be it further enacted*, That when a portion of a tract of land shall have been sold for levee taxes, as aforesaid, the same shall be taken and surveyed off in a square in the southwest corner of the tract.

SEC. 18. *Be it further enacted*, That the collector of the levee taxes for Desha county shall be allowed, in all sums collected by him, any sum not less than three per cent., nor more than the per cent allowed the collector of the State and county revenue for similar services, at the discretion of the county court.

SEC. 19. *Be it further enacted*, That all the levee bonds, scrip, or drafts issued by the several levee inspectors of said counties, prior to the taking effect of this act, shall be presented to the county clerk of the county in which said such scrip, bonds or drafts were issued, on or before the first day of January, eighteen hundred and sixty-two, whose duty it shall be to issue to the holder thereof the same amount of bonds, scrip, or drafts, bearing the same rate of interest, which interest shall run from the date the scrip, bond or draft bears interest before renewal, and each bond or draft shall be confined to the county and district in which it was issued, and out of the fund of which the same is to be paid.

SEC. 20. *Be it further enacted*, That all persons who shall hold any levee scrip, bonds or drafts upon the levee treasurer, who do not present the same to the clerk of the county court of the county in which such scrip, bond or drafts were issued as aforesaid, on or before the first day of January, eighteen hundred and sixty-two, shall be forever barred from the benefit of their claims.

SEC. 21. *Be it further enacted*, That it shall be the duty of the clerk of the county court, when any draft, scrip or bond shall be presented to him for renewal, as aforesaid, to record the date, number, amount, the rate of interest, when due, from

what date the interest commenced to run, and in whose favor the same was issued, what inspector issued the same, and the number of the district out of the fund of which the same is made payable, and shall file the same in his office, for the inspection of the county court.

SEC. 22. *Be it further enacted*, That all levee bond, scrip or drafts, issued in conformity with the act to which this is an amendment, which are due, shall be taken in payment of levee taxes, in the levee district, out of the funds of which the same is made payable.

SEC. 23. *Be it further enacted*, That nothing in this act contained shall be so construed as to tax any land in Desha and Phillips counties, which are not taxable for levee purposes under the act to which this is an amendment, nor shall a less valuation be put upon such lands than is now put upon the same by the act to which this is an amendment.

SEC. 24. *Be it further enacted*, That for the protection and preservation of the levees in the counties of Desha and Phillips, it shall be the duty of each levee inspector therein to have all the levees in his district, that have been, or may hereafter be built and completed under any law of this State, well sodded with Bermuda grass, and also have the said levees kept clear of weeds, briars, or undergrowth of any kind; and to enable each of said inspectors to comply with the provisions of this section, he is hereby fully authorized and empowered to let out contracts for such work whenever he may deem the same necessary, in the manner prescribed by law for letting other contracts for levee work; and no person shall be allowed to enclose any levee built by law in either of said counties, without the consent of the county court of the county in which the levee may be situated; and where any such levee may now be enclosed, the county courts of said counties shall have, and are hereby invested with full power and authority, in their discretion, to pass such orders, and enforce the same, as they may deem necessary, to have said levee turned out, and left free for public travel, with the exception of wagons.

SEC. 25. *Be it further enacted*, That this act take effect and be in force from its passage.

APPROVED, January 15th, 1861.

ACTS OF 1869.—No. LXII.

AN ACT to hold a Special Term of the County Court, in the Counties of Phillips and Desha, for Levee purposes, etc.

Be it enacted by the General Assembly of the State of Arkansas:

SECTION. 1. That by the provisions of the special acts of the General Assembly, approved the sixteenth day of February, eighteen hundred and fifty-nine, [1859,] and the fifteenth day of January, eighteen hundred and sixty-one, [1861,] to provide for making and repairing levees in Phillips and Desha counties, a number of levee bonds and levee scrip were issued to levee contractors and laborers, and the said bonds and scrip yet remains unpaid—therefore, it is hereby made the duty of the county court of each of said counties to hold a special term of the county court on the first Monday in May next, and at the next regular January term thereafter, to provide for the levy of a tax to pay said levee bonds and scrip, issued in conformity and by virtue of said acts aforesaid.

SEC. 2. It shall be the duty of the county courts of Phillips and Desha counties, at the said special and regular terms herein provided to be holden, to levy an annual tax upon all lands in each of the districts laid off by each of said county courts, in accordance with the said acts, approved the sixteenth day of February, eighteen hundred and fifty-nine, [1859,] and the fifteenth day of January, eighteen hundred and sixty-one, [1861,] at the rate of not less than one per cent. and not to exceed more than two per cent. per annum upon the assessed value of said lands as now and may hereafter be assessed, for the sum due from each of said districts; and the clerk of each of said courts, shall state upon the tax books the amount of levee tax chargeable upon each tract of land, according to the value of said lands, assessed for State and county purposes each year hereafter, until said levee bonds and scrip are paid off with accrued interest, in accordance with the order of the county court aforesaid, fixing the rate of levee tax; and the

sheriffs or collectors of said counties shall collect said taxes in accordance with the provisions of the acts approved the sixteenth day of February, eighteen hundred and fifty-nine, [1859,] and the fifteenth day of January, eighteen hundred and sixty-one, [1861]; said sheriffs or collectors of each of said counties, shall pay over to the treasurer of the county said levee tax, in each county, on or by the regular July term thereafter, and, upon his failing so to do, shall not be allowed any compensation for collecting the same, and shall also be subject to indictment for embezzlement of public funds.

SEC. 3. That the holders of all levee scrip or levee bonds are allowed the further time of one year, from the date of this act, to present the same to said county courts for payment, filed and numbered, in order to enable the courts to estimate the necessary amount to be levied each year upon the lands situated in each levee district, as laid off and designated by each of said county courts; and if such levee scrip or levee bonds are not presented for payment and registration within the time aforesaid, said county court shall have no authority to levy any more tax than to pay such scrip and bonds as were presented for payment within the time aforesaid.

SEC. 4. The county court of each of said counties, at said July term, shall apportion the amount of said levee tax collected, among the holders of said levee scrip or bonds due from each of said districts according to their pro rata share, direct the county treasurer to pay the same over to the holders of such scrip or bonds forthwith, and if there is still a balance due on said levee scrip or bonds, the said court shall order the clerk to issue new bonds for the same, including principal and interest, payable annually, until the debt and interest is wholly paid.

SEC. 5. That all acts or parts of acts that are in conflict with this act are bereby repealed, and this act shall take effect and be in force from and after its passage.

APPROVED, April 8, 1869.

ACTS OF 1873.—No. CXXXVII.

AN ACT to authorize certain Counties to Fund their Outstanding Indebtedness.

Be it enacted by the General Assembly of the State of Arkansas:

SECTION 1. That the board of supervisors of the following named counties of this State, to-wit: The counties of Jefferson, Chicot, Pulaski, Sebastian, Conway, Pike, Clark, Poinsett, Pope, Randolph, St. Francis, Woodruff, Crittenden, Sevier, Little River, Franklin, Hempstead, Phillips, Van Buren, Crawford, are hereby empowered to issue the bonds of such counties in any sum necessary to pay the outstandiug indebtedness of such counties, including unliquidated claims against the same, due at the time of the passage of this act.

SEC. 2. Such bonds shall be issued in denominations of not less than twenty-five dollars, and shall be made payable and become due in not less than three (3) nor more than ten (10) years from the date thereof. They shall bear interest at the rate of eight (8) per centum, and be payable, principal and interest, either at the treasury of the county issuing the same, or such place in the city of New York as the board of supervisors may in their discretion determine upon. The interest on said bonds shall be paid semi-annually, on the first day of July and January of each year, for which the said bonds shall have interest coupons attached; *Provided*, That the first coupon shall be made payable the first day of July of the next succeeding year after which they are issued. Said bonds shall be signed by the president of the board of supervisors, and attested by the county clerk, with the seal of the county attached, and the interest coupons shall be signed by the county clerk.

SEC. 3. Any person holding a duly issued order or warrant upon any of the counties named, issued by the county, or having a lawful claim against such county, and the same being audited and allowed, shall, upon the surrender of the same to the board of supervisors of the county for cancellation, receive therefor the bond of such county, to be issued as provided herein; *Provided*, That the person presenting the same for can-

cellation shall present orders, warrants or audited claims amounting to twenty-five dollars or more; *And provided*, There be no money in the treasury of such county to pay the same; *And provided further*, That no such bond shall be issued for indebtedness accruing after the passage of this act.

SEC. 4. It shall be the duty of the board of supervisors to duly cancel any order, warrant or audited claim that may be presented to them for cancellation under the provisions of this act, in such manner that the same cannot be reissued; and cause their records to show what orders, warrants or claims were so surrendered, their amount, the date of their issue, to whom issued, and that the same were canceled. They shall, also, keep a record of the bonds issued, showing to whom, their amount and date.

SEC. 5. It shall be the duty of the board of supervisors issuing bonds under the provisions of this act to levy a special tax of sufficient amount to pay the interest and principal of said bonds as the same become due. Such tax shall be collected in the lawful currency of the United States, and shall not be appropriated to any other purpose than that for which it was levied. If any board of supervisors neglect or refuse to levy the tax herein provided for, the holder of any such bond shall have a right to compel such levy by a writ of mandamus, which writ may run against the clerk of the county, and may be heard and determined by the judge of any court having jurisdiction in vacation; and should the writ be ordered and finally granted, the clerk of the county shall proceed to ascertain the required amount of tax to be levied, and shall place the same on the tax books for collection.

SEC. 6. Any county issuing bonds under the provisions of this act may, at any time before said bonds become due, call the same in, by paying the full amount of the principal and interest due on the same, in the lawful currency of the United States.

SEC. 7. The bonds of any county that may have been heretofore issued for the purpose of funding any lawful outstanding indebtedness, that is to say, of any county herein named, are hereby declared to be valid and lawfully issued, as though issued under this act.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 29, 1873.

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108-556

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1230.

EX PARTE: IN THE MATTER OF TOM TONG, PETITIONER.

HABEAS CORPUS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED MARCH 19, 1883.

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1 *Petition.*

In the circuit court of the United States in and for the district of California.

To the honorable Lorenzo Sawyer, judge of said circuit court:

The petition of Tom Tong respectfully shows that he is now in custody and unlawfully imprisoned and restrained of his liberty in contravention of the Constitution of the United States, and of that certain treaty entered into between the Emperor of China and the Government of the United States of February 5th, A. D. 1870, commonly known and called the Burlingame Treaty, (16 U. S. Statutes at Large, page 74), which unlawful restraint and imprisonment consists in this:

That on or about the 21st day of October, 1882, the board of supervisors of the city and county of San Francisco, a municipal corporation organized and acting under that certain act of the legislature of the
2 State of California entitled "An act to repeal the several charters of the city of San Francisco, to establish the boundaries of the city and county of San Francisco, and to consolidate the government thereof," approved April 19th, 1856, and the several acts of the legislature of the said State of California amendatory thereof and supplementary thereto, did pass a certain order known and designated as "order No. 1691, regulating the licensing, establishment, and maintenance of public laundries and public wash-houses within certain limits in the city and county of San Francisco," in the words and figures following, that is to say:

The people of the city and county of San Francisco do ordain as follows:

SECTION 1. On and after the first day of January, 1883, it shall be unlawful for any person or persons to establish, maintain, or carry on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within that portion of the city and county of San Francisco lying and being within the following boundaries:
3 commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel st.; thence along Channel street in a westerly direction to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement, without first having obtained a license or permit therefor duly granted by resolution of the board of supervisors.

SECTION 2. On and after the first day of January, 1883, the license collector of the city and county of San Francisco shall not issue a license to any person or persons proposing to carry on the business named in section 1 of this order in that portion of the city lying and being within the boundaries as described in said section 1 of this order until he or she or they have obtained a certified copy of the resolution as provided in section 1 of this order.

SECTION 3. Before any license or permit shall be granted for
4 carrying on the business named in section 1 of this order, there

must be filed with the clerk of the board of supervisors an accurate description and location of the premises for which the license is applied; also a certificate signed by the health officer of the city and county of San Francisco that said premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with, and particularly that the provisions of section 4 of order No. 1666 of this board have been complied with; also a certificate signed by the board of fire wardens of the city and county of San Francisco that the stoves, washing and drying apparatus, and the appliances for heating smoothing-irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of order No. 1617, defining "the fire limits of the city and county of San Francisco and making regulations concerning the erection and use of buildings in said city and county," and order No. 1670, "prohibiting the kindling, maintenance, and use of open fires in houses."

SECTION 4. It shall be the duty of the health officer, also of the board of fire wardens, respectively, upon application from any person or persons proposing to open or conduct the business of a public lau'dry within that portion of this city and county designated and described in section 1 of this order, to inspect the premises in which it is proposed to carry on said business or in which said business is being carried on, with a view to ascertaining whether the said premises are provided with proper drainage and sanitary appliances; also whether the provisions of orders Nos. 1617 and 1670 of this board have been complied with, and if found in all respects satisfactory, then to issue to said applicants the certificates provided for in section 1 of this order.

No charge whatever shall be made or compensation or fee collected or received for the performance of any of the services required by the provisions of this order in the inspection of premises or the issuance of a certificate, but all such services shall be performed free of charge.

SECTION 5. No person or persons owning or employed in the public laundries or public wash-houses provided for in section 1 of this order shall wash or iron clothes between the hours of 10 o'clock p. m. and 6 o'clock a. m. nor upon any portion of that day known as Sunday.

SECTION 6. No person or persons engaged in the laundry business within that portion of this city described in section 1 of this order shall permit any person suffering from any infectious or contagious disease to lodge, sleep, or remain within or upon the premises used by him, her, or them for the purposes of a public laundry.

SECTION 7. Any person or persons establishing, maintaining, or carrying on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county as described in section 1 of this order, without first having obtained permission from the board of supervisors and the license from the license collector provided for in subdivision XX of section 10 of order No. 1589 of this board, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment not more than six months, or by both; and any person who shall violate the provisions of

section 5 or 6 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than fifty dollars, or by imprisonment not more than one month, or by both such fine and imprisonment.

In board of supervisors, San Francisco, October 9, 1882.

After having been published five successive days according to law, taken up and passed by the following vote:

Ayes.—Supervisors Bodfish, McKerd, Shirley, Carmony, Molineux, Bradford, Fisher, Merrill, Russ, Parrish, Kennedy.

Absent.—Supervisor Torrens.

JNO. A. RUSSELL, *Clerk.*

The above order, No. 1691, not having been approved by his honor the mayor and ex-officis president of the board of supervisors, or returned to this board with objections thereto within ten days of the date of presentation thereof, has become valid in accordance with the provisions of section No. 68 of the consolidation act.

San Francisco, October 21, 1882.

JNO. A. RUSSELL, *Clerk.*

Which ordinance went into effect on the first day of January, 1883.

That petitioner is a native of China, and during all the times herein stated was, and still is, a subject of the emperor thereof.

That petitioner for twelve years last past has been, and still is, engaged in carrying on the business of a public laundry within that portion of said city and county lying and being within the following boundaries: "Commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel st.; thence along Channel street, in a westerly direction, to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement," being the same portion of said city and county particularly designated in said ordinance as that portion of the city and county of San Francisco lying and being within the following boundaries: "Commencing at the intersection of Gough street with the waters of the bay of San Francisco thence following the bay shore easterly and southerly to the easterly end of Channel st.; thence along Channel street, in a westerly direction, to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement."

That during the time petitioner carried on said business of a public laundry in said city and county he has in all respects complied with the laws of the United States, of the State of California, and the ordinances of the city and county of San Francisco, except as hereinafter stated, and he has in all respects complied with the provisions of Order No. 1589 of said board of supervisors.

Petitioner further shows that the business of carrying on a laundry is a lawful business, wherein a large number of the subjects of the Emperor of China have been and are engaged in the said city and county of San Francisco, and the majority of the subjects of said Emperor of China, carrying on said business in said city and county of San

Francisco, carry on the same within the limits of that portion
11 thereof hereinbefore particularly described, that is to say, according to the information and belief of petitioner there are about two hundred laundries within that portion of said city and county of San Francisco lying and being within the following boundaries: "Commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel st.; thence along Channel street, in a westerly direction, to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement," and there are only about seventy-five carried on in said city and county without said particularly described portion of said city and county of San Francisco.

That there is now and has been for several years last past great
12 antipathy and hatred on the part of the residence of said city and county of San Francisco, and the citizens and taxpayers thereof, against the subjects of the Emperor of China residing and doing business in said city and county of San Francisco.

That such antipathy and hatred has manifested itself in various ways and under various forms for the purpose and with the intent of expelling and compelling the subjects of said Emperor of China to quit and abandon doing business in said city and county of San Francisco, or in the State of California, or in the United States of America.

That for the purpose herein last stated there is organized a league of persons in said city and county of San Francisco commonly known and called the "League of Deliverance," consisting, as petitioner is informed and believes, of about five thousand people; the object and purpose of which league is by all ways and means to force the subjects of said Emperor of China to leave said city and county of San Francisco, and
13 leave the State of California, and leave the United States of America, and by all ways and means to prevent said subjects of the Emperor of China from carrying on and pursuing their respective vocations or earning a living by the exercise of the same within the city and county of San Francisco, or within the State of California, or within the United States of America.

That by and through such antipathy and hatred against the subjects of said Emperor of China, in said State of California, said persons so hostile to said subjects of said Emperor of China did cause and procure to be passed through the legislature of the State of California a certain act entitled "An act concerning lodging-houses and sleeping apartments within the limits of incorporated cities," approved April 3d, 1876, (statute 1875–'6, page 759), wherein and whereby it is provided that—

SECTION 1. Every person who owns, leases, lets, or hires to any
14 person or persons any room or apartment in any building, house, or other structure within the limits of any incorporated city or city and county, within the State of California, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space in the clear for each person occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty

dollars or more than five hundred dollars, or by imprisonment in the county jail, or by both such fine and imprisonment.

SECTION 2. Any person or persons found sleeping in or lodging in any room or apartment which contains less than five hundred cubic feet of space in the clear for each person so occupying such room or apartment shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than ten or more than fifty dollars, or by both such fine and imprisonment.

SECTION 3. It shall be the duty of the chief of police (or such other person to whom the police powers of the city are delegated) to detail a competent and qualified officer or officers of the regular force to examine into any violation of the provisions of this act, and to arrest any person guilty of any such violation.

Which said last-mentioned act of the legislature was enacted for the purpose and with the intent of annoying and harrassing said subjects of the Emperor of China in the State of California.

That under the provisions thereof the houses and dwellings of the said subjects of the Emperor of China within the city and county of San Francisco have been invaded without warrant, and the doors thereof frequently broken into at all hours in the night for the alleged purpose of ascertaining any infraction thereof.

That under the provisions of said act of the legislature about number of thousands subjects of the said Emperor of China have been arrested, and no other person or persons than the subjects of said Emperor of China have been arrested or prosecuted in the said city and county of San Francisco.

That with the intent and for the purpose of annoying and harrassing the said subjects of the Emperor of China within the said city and county of San Francisco, said persons, hostile to the subjects of the Emperor of China as aforesaid, have caused, and knowingly and intentionally, and for the purpose of annoying and harrassing said subjects of the Emperor of China who were employed at work in said city and county of San Francisco, to be arrested for pretended violation of said law at the time when they must either submit to putting up ten or twenty dollars as bail, and forfeiting the same, or lose their employment.

That said league of deliverence, as well as the other persons, inimical to the said subjects of the Emperor of China, do, and have in all ways and by all means discouraged and prevented people from employing said subjects of the Emperor of China in the said city and county of San Francisco, and have by threats and intimidations frequently succeeded in so doing.

That owing to the aforesaid feeling of antipathy and hatred prevailing against the said subjects of the Emperor of China, and not otherwise, and not for any sanitary, police, or other legitimate purpose, but for the purpose and with the intent of forcing said subjects of the Emperor of China engaged in carrying on the business of a laundry in said city and county of San Francisco to abandon exercise of their lawful vocation and their only means of earning a livelihood, the said board of supervisors did enact and pass the ordinance hereinabove first set forth.

That said board of supervisors at the time of the passage of said ordinance well knew that the great bulk of the subjects of said

Emperor of China engaged in carrying on the business of a laundry within the said city and county of San Francisco were situate within that portion of the limits thereof in said ordinance particularly specified, and that exclusion therefrom was and would be practically exclusion from said city and county of San Francisco.

That said ordinance was enacted, framed, and adopted, not from any legitimate police regulation or sanitary purpose, but for the purpose and with the intent of excluding said subjects of the Emperor of China from carrying on or conducting said business of a laundry within the aforesaid portion of the city and county of San Francisco.

That petitioner has been and is earning his living exclusively by carrying on and conducting the business of a laundry as hereinbefore
19 stated, and has no other lawful vocation or pursuit to earn his living except such business.

That petitioner is ready and willing to pay the license fees provided by the ordinance of said board of supervisors, and to pay all the lawful taxes, charges, licenses, or assessments required by the laws of the State of California, or the laws of the United States, in order to carry on and conduct said business of a laundry as hereinbefore stated.

That said board of supervisors will not grant, nor will any of the officers in said ordinance specified grant, to your petitioner any of the authorizations mentioned in said ordinance hereinbefore first mentioned.

That while so unable to procure the authorizations mentioned as required in and by the provisions of said ordinance hereinbefore first recited, and while petitioner was lawfully carrying on and conducting said business of a laundry in said city and county of San Francisco, as aforesaid,
20 on the 15th day of January, A. D. 1883, James Galbraith did file a complaint, in writing, in the police judge's court of the said city and county of San Francisco, which, omitting the caption thereof, was in the words and figures following, that is to say:

"Personally appeared before me, this 15th day of January, A. D. 1883, James Galbraith, who, on oath, makes complaint, and deposes and says that on the 13th day of January, A. D. 1883, in the city and county of San Francisco, State of California, the crime of misdemeanor was committed, to wit, by Tom Tong (whose real name is unknown to this complainant), who then and there, at No. 624 California street, between Dupont and Kearney streets, did wilfully and unlawfully establish, maintain, and carry on the business of a public laundry and public wash-house, where clothes and other articles were then and there cleansed for hire, without first having
21 obtained a license or permit therefor, duly granted by resolution of the board of supervisors of said city and county of San Francisco, described as follows: commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly line of Channel street, in a westerly direction, to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to point of commencement, thereby violating the provisions of section 1, order No. 1691, of the board of supervisors of said city and county of San Francisco, contrary to the form, force, and effect of the statute in such case made and provided, and against the peace and dignity of the people of the State of

California; and this complainant, upon oath, accuses the said
22 Tom Tong of having committed the said crime, and prays that the said accused may be brought before a magistrate and dealt with according to law.

"JAMES GALBRAITH.

"Subscribed and sworn to before me this 15th day of January, A. D. 1883.

"JAMES LAWLER,
"*Judge of the Police Judge's Court No 2, of the City and County of San Francisco.*"

Which complaint was duly verified and filed in said court, and thereupon a warrant in due form of law did issue thereon, and under and by virtue of said warrant, and not otherwise, is petitioner unlawfully imprisoned and restrained of his liberty, and is now held in custody by Patrick Crowley, chief of police of said city and county.

That petitioner avers that said ordinance of said board of supervisors hereinbefore first set forth, to wit, order number, 1691, was and is
23 null and void, and in contravention of the treaty hereinabove mentioned, and in contravention of the provisions of article fourteen of the Constitution of the United States, wherein it is provided: "Nor shall any State deny to any person within its jurisdiction the equal protection of the law," and in contravention of the provisions of section 1977 of the Revised Statutes of the United States, providing that "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Wherefore petitioner prays that a writ of habeas corpus issue herein in the manner and form prescribed by law in such cases.

his
TOM 湯木公 TONG.
mark.

McALLISTER & BERGIN,
Att'ys for Petitioner.

24 DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Tom Tong, having been duly sworn, says that he is the petitioner in the above-entitled matter; that he has heard read the foregoing petition, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true.

his
TOM 湯木公 TONG.
mark.

Subscribed and sworn to before me this 15th day of January, A. D. 1883.

[SEAL.] J. H. BLOOD,
Notary Public in and for the City and County of San Francisco, California.

Let a writ of habeas corpus issue returnable January 19th, 1883, at 10.30 o'clock a. m.

January 16, 1883.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed January 16, 1883. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

25 *Copy writ of habeas corpus and return of U. S. Marshal.*

The President of the United States of America to P. Crowley, esq., chief of police of the city and county of San Francisco, State of California, greeting:

You are hereby commanded that you have the body of Tom Tong, by you imprisoned and detained, as it is said, together with the cause of such imprisonment and detention, before the honorable circuit court of the United States for the district of California, at the court-room of said circuit court, situate in the building on the northeast corner of Washington and Sansome streets, in the city and county of San Francisco, district of California, on the 19th day of January, A. D. 1883, at 10.30 o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said Tom Tong. And have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the
26 Supreme Court of the United States of America, this 16' day of January, A. D. 1883.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

A true copy. Attest:

[SEAL.] L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE,
Deputy Clerk.

UNITED STATES MARSHAL'S OFFICE,
District of Cal:

I hereby certify that I received the writ of which the within is a certified copy on the 16th day of January, 1883, and personally served the same on the same day by delivering to and leaving P. Crowley, esq., chief of police of the city of San Francisco, State of Cal., said respondent named therein, personally, at the city and county of San Francisco, the original writ.

M. M. DREW, *Marshal*,
By G. B. MELLUS, *Deputy.*

(Endorsed:) Filed Jan'y 18, 1883. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

27 *Writ of habeas corpus.*

The President of the United States of America to P. Crowley, esq., chief of police of the city and county of San Francisco, State of California, greeting:

You are hereby commanded that you have the body of Tom Tong, by you imprisoned and detained, as it is said, together with the cause of such imprisonment, before the honorable circuit court of the United States for the district of California, at the court-room of said circuit court, situate in the building on the northeast corner of Washington and Sansome streets, in the city and county of San Francisco, district of California, on the 19th day of January, A. D. 1883, at 10:30 o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said Tom Tong, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 16th day of January, A. D. 1883.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

28 *Return to writ of habeas corpus of P. Crowley.*

(Copy warrant.)

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Police judge's court No. 2.

The people of the State of California to any sheriff, constable, marshal, or policeman in this State:

A complaint upon oath having been this day made before me, James Lawler, judge of the police judge's court No. 2, by James Galbraith, that the offense of misdemeanor, carrying on business of a public laundry without first having obtained a license therefor, thereby violating the provisions of section 1, order No. 1691 of the board of supervisors of the city and county of San Francisco, has been committed, and accusing Tom Tong (real name unknown) thereof, you are therefore commanded forthwith to arrest the above-named Tom Tong (if pointed out) and bring him before me forthwith, at the police judge's court No. 2, in the city hall, in this city and county of San Francisco.

29 Witness my hand and the seal of the police judge's court No. 2 of the city and county of San Francisco, this 15th day of January, A. D. 1883.

[SEAL.] JAMES LAWLER,
Judge of the Police Judge's Court No. 2 of the City and County of San Francisco.

Police judge's court No. 2.

THE PEOPLE
vs. } Warrant.
TOM TONG.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

To the honorable the police judge's court No. 2 of the city and county of San Francisco.

I, the undersigned police officer, do hereby make this my return to this warrant, and do hereby certify that I have executed and served the warrant by arresting the within-named defendant, this 15th day of January, A. D. 1883, who, at the time of the arrest, declares his true name
30 to be Tom Tong, and I do herewith bring said defendant before the honorable the judge of the police judge's court No. 2 as commanded in this warrant.

EDWARD COHRN,
Police Officer of the City and County of San Francisco.

Filed in the police judge's court No. 2 of the city and county of San Francisco this Tuesday, January 16, 1883.

J. F. BRADFORD, *Clerk.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Police judge's court No. 2.

The within-named defendant may be admitted to bail, by bond, in the sum of 100, or by the deposit of 30 dollars in coin.

JAMES LAWLER,
Judge of the Police Judge's Court No. 2 of the City and County of San Francisco.

31 To the honorable circuit court of the United States for the district of California.

IN THE MATTER OF THE APPLICATION of Tom Tong for a writ of habeas corpus. } Return of P. Crowley, chief of police.

In obedience to the writ of habeas corpus hereto annexed, I do hereby certify and return to the honorable circuit court of the United States for the district of California:

That before the coming to me of the within writ, the said Tom Tong was arrested by a police officer, and is detained by virtue of a warrant issued under the hand of James Lawler, judge of the police judge's court No. 2 of the city and county of San Francisco, and under the seal of said court, to me, a copy of which annexed I transmit to you.

Nevertheless I have the body of said Tom Tong before you at the day and place within mentioned, as I am within commanded.

(Signed) P. CROWLEY,
Chief of Police of the City and County of San Francisco.

32 (Endorsed:) Filed January 19, 1883. L. S. B. Sawyer, clerk.

33 *Certificate of opposition in opinion.*

At a stated term, to wit, the February term, A. D. 1883, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Monday the nineteenth day of February, in the year of our Lord one thousand eight hundred and eighty-three.

Present, the honorable Lorenzo Sawyer, circuit judge; the honorable Ogden Hoffman, district judge.

IN THE MATTER OF TOM Tong on habeas corpus.

This case was heard on the petition for a writ of habeas corpus of Tom Tong, the writ of habeas corpus issued thereon, and the return thereto of P. Crowley, chief of police of the city and county of San Francisco,
34 who claimed to be in legal custody and entitled to the custody of said petitioner, Tom Tong, under and by virtue of the writ set out in his return to said writ of habeas corpus, which said petition, writ of habeas corpus, and return thereto are hereby made a part of this certificate, and ordered to be certified by the clerk, and annexed to this certificate as a part thereof, and a part of the record of this case on certificate of opposition of opinion; the case having been heard on said petition, writ of habeas corpus, and return, alone, taken as true, there being no issue taken upon either other than appears therein, and no testimony offered on either side.

At the hearing of said case at the present term of this court upon the said papers and record there occurred as questions, arising on said record:

1. Whether upon the facts stated in the petition filed in this case a writ of habeas corpus ought to have been issued by this court according to the prayer of said petition?
35 2. Whether upon the facts stated in the petition, and in the return to the writ issued herein, said petitioner ought to be discharged from custody?

3. Whether, assuming said ordinance set out in the petition herein to be void, the petitioner is "in custody in violation of the Constitution, or of a law or treaty of the United States," within the meaning of section 753 of the Revised Statutes of the United States, and whether he ought to be discharged on that ground?

4. Whether, assuming said ordinance to be void, the court is forbidden to discharge the petitioner by the provisions of section 753 of the Revised Statutes of the United States?

5. Whether the ordinance set out in the petition in this case is void on the ground that it does not fix any terms or conditions upon complying with which the petitioner and others similarly situated are entitled,

36 absolutely, to a license to pursue their calling, but still leaves it in the discretion of the board of supervisors to pass, or refuse to pass, a resolution granting a permit, or authorizing the issue of a license, the ordinance only allowing the board of supervisors to pass a resolution granting such permit, or authorizing the issue of a license in its discretion, after the applicant has performed all the conditions prescribed by said ordinance, without making it obligatory upon the board to pass such resolution?

6. Whether the ordinance set out in the petition is void on the ground that it is unreasonable in its requirements, or upon any other ground apparent upon the face of the ordinance or appearing in the petition and return, or in the record herein?

Upon which several questions, and upon each of them, the opinions of the judges were opposed.

Whereupon, on motion of T. I. Bergin, esq., on behalf of said
37 petitioner, that the several points on which the disagreement has happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court of the United States to be finally decided; that the foregoing statement of the record upon which the case was heard, and of the facts, which is made under the direction of the judges, be entered of record, and be certified accordingly, at the request of his said counsel, and in pursuance of the law in such case made and provided.

February 19, 1883.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Signed) OGDEN HOFFMAN,
Dist. Judge.

(Endorsed:) Filed and entered February 19, 1883. L. S. B. Sawyer, clerk.

38 I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing thirty-seven written pages, numbered from 1 to 37, inclusive, are a full, true, and correct copy of the record and of all proceedings in the therein-entitled matter.

Witness my hand and the seal of said circuit court this 26th day of February, A. D. 1883.

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Indorsement on cover:) No. 1230. Ex-parte. In the matter of Tom Tong, petitioner. Certificate of division. California C. C. U. S. Filed March 19th, 1883.

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8-576

FILED
MAR 19 1892
JAMES H. McKENNEY

No. 1230.

IN THE

SUPREME COURT

OF THE

United States of America.

In the Matter of the Application of

TOM TONG

for a Writ of Habeas Corpus.

BRIEF FOR PETITIONER.

HALL McALLISTER,

Counsel for Petitioner.

36 absolutely, to a license to pursue their calling, but still leaves it in the discretion of the board of supervisors to pass, or refuse to pass, a resolution granting a permit, or authorizing the issue of a license, the ordinance only allowing the board of supervisors to pass a resolution granting such permit, or authorizing the issue of a license in its discretion, after the applicant has performed all the conditions prescribed by said ordinance, without making it obligatory upon the board to pass such resolution?

6. Whether the ordinance set out in the petition is void on the ground that it is unreasonable in its requirements, or upon any other ground apparent upon the face of the ordinance or appearing in the petition and return, or in the record herein?

Upon which several questions, and upon each of them, the opinions of the judges were opposed.

37 Whereupon, on motion of T. I. Bergin, esq., on behalf of said petitioner, that the several points on which the disagreement has happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court of the United States to be finally decided; that the foregoing statement of the record upon which the case was heard, and of the facts, which is made under the direction of the judges, be entered of record, and be certified accordingly, at the request of his said counsel, and in pursuance of the law in such case made and provided.

February 19, 1883.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Signed) OGDEN HOFFMAN,
Dist. Judge.

(Endorsed:) Filed and entered February 19, 1883. L. S. B. Sawyer, clerk.

38 I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing thirty-seven written pages, numbered from 1 to 37, inclusive, are a full, true, and correct copy of the record and of all proceedings in the therein-entitled matter.

Witness my hand and the seal of said circuit court this 26th day of February, A. D. 1883.

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Indorsement on cover:) No. 1230. Ex-parte. In the matter of Tom Tong, petitioner. Certificate of division. California C. C. U. S. Filed March 19th, 1883.

8-576

FILED
MAR 19 1892

No. 1230.

IN THE

SUPREME COURT

OF THE

United States of America.

In the Matter of the Application of

TOM TONG

for a Writ of Habeas Corpus.

BRIEF FOR PETITIONER.

HALL McALLISTER,

Counsel for Petitioner.

IN THE SUPREME COURT

OF THE

United States of America.

IN THE MATTER OF THE APPLICATION OF TOM TONG FOR A WRIT OF HABEAS CORPUS.

STATEMENT OF THE CASE.

This is a case arising upon a certificate of opposition of opinion between the District and Circuit Judge of the United States, of the Circuit Court, in and for the District of California.

The facts of the case are, that on January 16th, 1883, Tom Tong, the petitioner, a native and subject of the Emperor of China, petitioned the Circuit Court of the District of California for a writ of *habeas corpus*, alleging that he was in custody and unlawfully imprisoned and restrained of his liberty, in contravention of the Constitution of the United States and of a certain treaty entered into between the Emperor of China and the Govern-

ment of the United States, of February 5th, A. D. 1870, commonly known and called the Burlingame Treaty (16 U. S. Statutes at Large, page 740), which unlawful restraint and imprisonment consisted in this: That on or about the 21st day of October, 1882, the Board of Supervisors of the City and County of San Francisco did pass a certain order known and designated as Order No. 1691, regulating the licensing, establishment and maintenance of public laundries and public wash-houses within certain limits in the City and County of San Francisco, in the words and figures following, that is to say:

ORDINANCE.

The People of the City and County of San Francisco do ordain as follows:

SECTION 1. On and after the first day of January, 1883, it shall be unlawful for any person or persons to establish, maintain or carry on the business of a public laundry, or a public wash-house, where clothes or other articles are cleansed for hire, within that portion of the City and County of San Francisco lying and being within the following boundaries: commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement, without having first obtained a license or permit therefor, duly granted by resolution of the Board of Supervisors.

SECTION 2. On and after the first day of January, 1883, the license collector of the City and County of San Francisco shall not issue a license to any person or persons proposing to carry on the business named in Section 1 of this order, in that portion of the city lying and being within the boundaries, as described in said Section 1 of this order, until he, she or they have obtained a certified copy of the resolution, as provided in Section 1 of this order.

SECTION 3. Before any license or permit shall be granted for carrying on the business named in Section 1 in this order, there must be filed with the Board of Supervisors an accurate description and location of the premises for which the license is applied; also a certificate, signed by the Health Officer of the City and County of San Francisco, that said premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood, have been complied with, and particularly that the provisions of Section 4, of Order No. 1666 of this Board, have been complied with. Also a certificate signed by the Board of Fire Wardens of the City and County of San Francisco, that the stoves, washing and drying apparatus, and the appliances for heating smoothing irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of Order No. 1617, defining "the "fire limits of the City and County of San Francisco, and "making regulations concerning the erection and use of "buildings in said City and County," and Order 1670, "prohibiting the kindling, maintenance and use of open "fires in houses."

SECTION 4. It shall be the duty of the Health Officer, and also of the Board of Fire Wardens, respectively, upon the application of any person or persons proposing to open or conduct the business of public laundry, with-

in the portion of said City and County designated and described in Section 1 of this order, to inspect the premises in which it is proposed to carry on said business, or in which said business is being carried on, with a view of ascertaining whether said premises are provided with proper drainage and sanitary appliances, also, whether the provisions of Orders No. 1617 and 1670 of this Board have been complied with, and if found in all respects satisfactory, then to issue to said applicants the certificate provided for in Section 1 of this order. No charge whatever shall be made, or compensation or fee collected or received for the performance of any of the services required by the provisions of this order, in the inspection of the premises and the issuance of certificates, but all such services shall be performed free of charge.

SECTION 5. No person or persons owning or employed in the public laundries or public wash-houses provided for in Section 1 of this order, shall wash or iron clothes between the hours of 10 o'clock P. M. and 6 o'clock A. M., nor upon any portion of that day known as Sunday.

SECTION 6. No person or persons engaged in the laundry business, within that portion of this city described in Section 1 of this order, shall permit any person suffering from any infectious or contagious disease to lodge, sleep or remain within or upon the premises used by him, her or them for the purpose of a public laundry.

SECTION 7. Any person or persons using, maintaining or carrying on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in Section 1 of this order, without first having obtained permission from the Board of Supervisors, and a license from the License Collector, provided for in Sub-division XX, of Section 10, of Order No. 1589 of

this Board, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1000, or by imprisonment of not more than six months, or by both, and any person who shall violate the provisions of Section 5 or 6 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $5, nor more than $50, or by imprisonment for not more than one month, or by both such fine or imprisonment.

Which ordinance went into effect the 1st day January, 1883. That for twelve years last past, he has been, and still is, engaged in carrying on the business of a public laundry, within that portion of said city and county, lying and being within the following boundaries: "Commencing "at the intersection of Gough street, with the "waters of the Bay of San Francisco; thence "following the bay shore easterly and southerly to "the easterly end of Channel street; thence along "Channel street in a westerly direction to Ninth "St.; thence northwesterly along Ninth street "to Market street; thence southwesterly along "Market street to Gough street, and thence "northerly along Gough street to the point of "commencement," being the same portion of said city and county particularly designated in the ordinance; that during the time he has carried on the business, he has, in all respects, complied with the laws of the United States, of the State of California and of the City and County of San Francisco, except as hereinafter stated, and he has, in all respects, complied with the provisions of order No. 1589 of the Board of Supervisors.

The business of carrying on a laundry is a lawful business, wherein a large number of the subjects of the Emperor of China have been and are engaged in the City and County of San Francisco, and the majority of the subjects of the Emperor of China carrying on the business, are carrying the same on within the limits of that portion thereof hereinbefore particularly described; that is to say, there are about two hundred laundries within the particularly described portion of the City and County of San Francisco; that there is now and has been for several years last past, great antipathy and hatred on the part of the residents of the City and County of San Francisco, and the citizens and taxpayers thereof against the subjects of the Emperor of China, residing and doing business therein; that such antipathy and hatred has manifested itself in various ways and under various forms, for the purpose and with the intent of expelling and compelling the subjects of said Emperor of China to quit and abandon doing business or remaining in the City and County of San Francisco, or in the State of California, or in the United States of America.

That for the purpose last stated, there is organized a league of persons, commonly called the League of Deliverance, consisting of about five thousand people, the object and purpose of which league is by all ways and means to force the subjects of the Emperor of China to leave the City and County of San Francisco, and leave the State of California, and leave the United States of

America, and by all ways and means to prevent such subjects from carrying on and pursuing their respective vocations or earning a living by the exercise of the same within the City and County of San Francisco, or within the State of California, or within the United States of America. That by and through such antipathy and hatred against the subjects of the Emperor of China, in said State of California, the persons so hostile caused and procured to be passed through the legislature of the State of California, a certain act entitled "An Act concerning lodging houses "and sleeping apartments within the limits of in- "corporated cities." Approved April 3, 1876 (Statutes of 1875–6, page 759), wherein and whereby it is provided:

"SECTION 1. That every person who leases, holds or "hires to any person or persons any room or apartment "in any building, house or other structure within the lim- "its of any incorporated city, or city and county within "the State of California, for the purpose of lodging or "sleeping apartments, which room or apartment contains "less than five hundred cubic feet of space in the clear for "each person occupying such room or apartment, shall be "deemed guilty of a misdemeanor, and shall upon convic- "tion thereof be punished by a fine of not less than $50, "or more than $500, or by imprisonment in the county "jail, or by both such fine and imprisonment.

"SECTION 2. Any person or persons found sleeping "in or lodging in any room or apartment which contains "less than 500 cubic feet of space in the clear, for each "person so occupying such room or apartment, shall be "deemed guilty of a misdemeanor, and shall upon con- "viction be punished by a fine of not less than $10 or "more than $50, or by both such fine and imprisonment.

"SECTION 3. It shall be the duty of the Chief of Police (or such other person, to whom the police powers "of the city are delegated), to detail competent and qualified officers of the regular force, to examine into any "violations of the provisions of this Act, and to arrest any "person guilty of any such violation."

Which act of the Legislature was enacted for the purpose and with the intent of annoying and harassing the subjects of the Emperor of China in the State of California. That under its provision the houses and dwellings of the subjects of the Emperor of China within the City and County of San Francisco have been invaded without warrant, and the doors thereof frequently broken in at all hours in the night for the alleged purpose of ascertaining any infraction thereof; that under the provisions of said Act of the Legislature about of the subjects of said Emperor of China have been arrested, and no other person or persons than the subjects of the said Emperor of China have been arrested or prosecuted. That with the intent and for the purpose of annoying and harassing the said subjects of said Emperor of China within the City and County of San Francisco, the persons hostile to the subjects of the Emperor of China have caused, and knowingly and intentionally and for the purpose of annoying and harassing, such subjects employed or at work, to be arrested for pretended violation of this law at a time when they must either submit to putting up ten or twenty dollars as bail and forfeiting the same or lose their employment.

That the League of Deliverance, as well as the other persons inimical to the subjects of the Emperor of China, do and have by all ways and all means discouraged and prevented people from employing the subjects of the Emperor, and have by threats and intimidation frequently succeeded in so doing; that owing to this feeling of antipathy and hatred prevailing against the subjects of the Emperor and not otherwise, and not *for any sanitary, police or other legitimate purpose*, but for the purpose and with the intention of forcing the subjects of the Emperor engaged in carrying on the business of laundry to abandon the exercise of their lawful vocation and their only means of earning a livelihood, said Board of Supervisors did enact and pass the ordinance in question.

That said Board of Supervisors at the time of the passage of said ordinance well knew that the great bulk of the subjects of said Emperor engaged in carrying on the business of laundry, were situated within that portion of the limits of the city in the ordinance particularly specified, and that their exclusion therefrom was and would be practical exclusion from the City and County of San Francisco.

That the ordinance was enacted, framed and adopted not for any legitimate police regulation or sanitary purpose, but for the purpose and with the intent of excluding the subjects of the Emperor from carrying on or conducting the business of a laundry within the aforesaid portion of said City and County of San Francisco.

That he has been and is earning his living exclusively by carrying on and conducting the business of a laundry as hereinbefore stated and has no other lawful vocation or pursuit to earn his living except such business. That he is ready and willing to pay the license fees provided by the ordinance of said Board of Supervisors, and to pay all lawful charges, taxes, licenses or assessments required by the laws of the State of California or the laws of the United States, in order to carry on and conduct the business of a laundry.

The said Board of Supervisors will not grant, nor permit any of the officers in the ordinance specified to grant to him any of the authorizations mentioned in it; that while so unable to procure the authorizations mentioned and required in the ordinance, and while he was lawfully carrying on and conducting his business of laundry in said City and County of San Francisco, on the 15th of January, 1883, James Galbraith did file a complaint in writing in the Police Judge's Court in said City and County of San Francisco, a copy whereof is in the words and figures following, that is to say:

"Personally appeared before me, the 15th day of Janu-
"ary, 1883, James Galbraith, who, on oath, makes com-
"plaint, and deposes and says, that on the 13th day of
"January, A. D. 1883, in the City and County of San
"Francisco, State of California, the crime of misde-
"meanor was committed, to-wit: by Tom Tong (whose
"real name is unknown to this complainant), who then and
"there, at No. 621 California St., between Dupont and
"Kearny Sts., did willfully and unlawfully establish,
"maintain and carry on the business of a public laundry

" and public wash-house, where clothes and other articles " were then and there cleansed for hire, without first " having obtained a license or permit therefor, duly " granted by resolution of the Board of Supervisors of " said City and County of San Francisco, described as " follows: Commencing at the intersection of Gough " St., with the waters of the Bay of San Francisco; thence " following the bay shore easterly and southerly to the " easterly line of Channel St.; thence along Channel street, " in a westerly direction, to Ninth street; thence north- " westerly along Ninth street to Market street; thence " southwesterly along Market street to Gough street, and " thence northerly along Gough street to the point of " commencement, thereby violating the provisions of " Section 1 of Order 1691 of the Board of Supervisors " of said City and County of San Francisco, contrary to " the form, force and effect of the statute in such cases " made and provided, and against the peace and dignity " of the people of the State of California, and this com- " plainant upon oath accuses the said Tom Tong of having " committed the said crime, and prays that the accused " may be brought before a magistrate and dealt with " according to law.

" (Signed)

" JAMES GALBRAITH.

" Subscribed and sworn to before me the 15th day of " January, 1883.

" JAMES LAWLOR,

" *Police Judge's Court No. 2,*

" *City and County of San Francisco.*"

Which complaint was duly verified and filed in said Court, and thereupon a warrant in due form of law did issue thereon, and under and by virtue of such warrant, and not otherwise, is he unlawfully imprisoned and restrained of his liberty, and

is now held in custody by Patrick Crowley, Chief of Police of said city and county.

That the ordinance is null and void, and in contravention of the provisions of that treaty hereinbefore mentioned, and in contravention of the provisions of Article XIV of the Constitution of the United States, wherein it is provided :

" Nor shall any State deny to any person within its " jurisdiction the equal protection of the law."

And in contravention of the provisions of Section 1977 of the Revised Statutes of the United States, providing that :

" All persons within the jurisdiction of the United " States shall have the same right in every State and " Territory, to make and enforce contracts, to sue and be " parties, give evidence, and to have the full and equal " benefit of all laws and proceedings for the security of " persons and property, as enjoyed by white citizens, " and shall be subject to like punishment, pains, penal- " ties, taxes, licenses, and exactions of every kind, and " to no other."

Upon this application, a writ of *habeas corpus* was issued, and return thereto was made setting up that the petitioner was restrained and imprisoned under and by virtue of the warrant alleged in the application.

The case was then argued by counsel and submitted to the Court, when the Circuit and District Judges, being opposed, in opinion certified that they were opposed, upon the following points, that is to say :

1. Whether, upon the facts stated in the petition filed in this case, a writ of *habeas corpus*,

ought to have been issued by this Court, according to the prayer of said petition.

2. Whether, upon the facts stated in the petition, and in return to the writ issued herein, said petitioner ought to be discharged from custody.

3. Whether, assuming said ordinance set out in the petition herein to be void, the petitioner is in custody in violation of the Constitution, or of a law or treaty of the United States within the meaning of Section 753 of the Revised Statutes of the United States, and whether he ought to be discharged on that ground.

4. Whether, assuming said ordinance to be void, the Court is forbidden to discharge the petitioner by the provisions of Section 753 of the Revised Statutes of the United States.

5. Whether, the ordinance set out in the petition in this case is void on the ground, that it does not fix any terms or conditions upon complying with which, the petitioner and others similarly situated, are entitled absolutely to a license to pursue their calling, but still leaves it in the discretion of the Board of Supervisors to pass or refuse to pass a resolution granting a permit, or authorizing the issue of a license, the ordinance only allowing the Board of Supervisors to pass a resolution granting such permit, or authorizing the issue of a license, in his discretion, after the applicant has performed all the conditions prescribed by said ordinance, without making it obligatory upon the Board to pass such resolution.

6. Whether the ordinance set out in the petition is void, on the ground that it is unreasonable in its requirements, or upon any other ground apparent upon the face of the ordinance, or appearing in the petition and return, or in the record herein.

In support of the right of the petitioner to the writ prayed for, the following points, authorities and considerations are respectfully submitted.

I.

The Constitution of the United States, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under authority of the United States, are the supreme law of the land.

Constitution of the United States, Article VI.

II.

The Constitution of the United States authorizes the making of treaties, and they are supreme.

This power is without qualification or limitation, save such as necessarily results from the frame of the Federal Government.

Hauenstein vs. *Linham*, 10 Otto, 490.
Holden vs. *Joy*, 17 Wall. (U. S.), 242.

People vs. *Gherke*, 5 Cal., 282.
People vs. *De la Guera*, 40 Cal., 340.
Yeaker vs. *Yeaker*, 4 Metc. (Ky.), 33.
2 Story, Const., Secs. 1508–9.

III.

Congress has exclusive power to regulate commerce, either by treaty or by statute.

Chy Lung vs. *Freeman*, 2 Otto, 279–285.
Henderson vs. *Mayor of New York*, 2 Otto, 268.

IV.

The police power of the state is subordinate to the treaty making power of Congress, in case of conflict.

Henderson vs. *Mayor of New York*, 2 Otto, 271.
Railroad Company vs. *Husen*, 5 Otto, 471.

V.

Discriminating state legislation is inadmissible to impair its efficiency.

Ward vs. *Maryland*, 12 Wall. (U. S.), 418.
Welton vs. *State of Missouri*, 1 Otto, 279.
U. S. vs. *Forty-three Gallons of Whisky*, 3 Otto, 195.

VI.

The mere vesture in which attempt is made to affect or impair constitutional or treaty obligations of the United States will not avail; the Court will look at the substance and to the result.

Cumming vs. *Missouri*, 4 Wall. U. S., 379.
Henderson vs. *Mayor of New York*, 2 Otto, 268.
Chy Lung vs. *Freeman*, 2 Otto, 279.
State vs. *Constitution*, 42 Cal., 585.

VII.

The Burlingame Treaty, Article 5, reads:

"The United States of America and the Emperor of "China cordially recognize the inherent and inalienable "right of man to change his home and allegiance, and "also the mutual advantage of the free migration and "emigration of their citizens and subjects respectively "from one country to the other for purposes of curiosity, "of trade, or as permanent residents.

"ART. 6. Citizens of the United States visiting or "residing in China shall enjoy the same privileges, im- "munities or exemptions in respect to travel or residence "as may there be enjoyed by the citizens or subjects of "the most favored nation, and, reciprocally, Chinese sub- "jects visiting or residing in the United States shall en- "joy the same privileges, immunities and exemptions in "respect to travel or residence, as may there be enjoyed "by the citizens or subjects of the most favored nation."

The right to labor for a living is an inalienable right recognized by the Declaration of Independence, as well as all Constitutions and writers, and is a right secured by the Burlingame Treaty.

Parrott Case, 6 Sawyer, 374.
The Slaughter House Case, 1 Woods (C. C.), 29.
The Slaughter House Cases, 16 Wall. (U. S.), 89, 90, 97, 100, 101, 106, 109, 113, 116, 122 and 127.
Cooley's Const. Limit., 397.

As to what are personal rights,

Vide 1 Kent, 607, 615.
1 Blackstone, 124, 125, 129, 130, 132 and 133.

As to the rights of aliens,

Vide Taylor vs. *Carpenter*, 2 Woodb. & M., 13.
Wharton's Conflict of Laws, Sec. 124.

VIII.

Admitted powers of government must be reasonably exercised.

Sinking Fund Cases, 9 Otto, 721.
Missouri vs. *Lewis*, 11 Otto, 32.
Koshkonong vs. *Burton*, 14 Otto, 675.

IX.

Section 1977, of the Revised Statutes, provides that

"All persons within the jurisdiction of the United "States shall have the same right in every State and "Territory to make and enforce contracts, to sue, be "parties, give evidence, and to the full and equal bene- "fit of all laws and proceedings for the security of per- "sons and property as is enjoyed by white citizens, and "shall be subject to like punishment, pains, penalties, "taxes, licenses and exactions of every kind, and to no "other."

This is a constitutional exercise of power on the part of Congress, and all State legislation in contravention of its provisions is void.

The Moses Taylor, 4 Wall. (U. S.), 428.
Gaines vs. *Buford*, 1 Dana (Ky.),485–8.

A right or privilege secured under the Constitution of the United States, a law thereof, or a treaty thereunder, can no more be impaired or affected by State constitutional provision than by State statute.

Gunn vs. *Barry*, 15 Wall. (U. S.), 623.

X.

Section XI, Art. XI of the Constitution of California, provides :

"Any county, city, town, or township may make and "enforce within its limits all such local, police, sanitary,

" and other regulations as are not in conflict with general " laws."

This power does not authorize a municipality to make any rule or regulation that will infringe upon rights secured under the laws or treaties of the United States.

Cooley's Const. Limit., 242.

The power is legislative in its character, and its exercise in that character cannot be abdicated.

Darling vs. *City of St. Paul*, 19 Minn., 392.

What is legislative power? It is the power to enact rules to be observed in the civil conduct of men, or, in other words, legislative power in this respect is synonymous with law-making authority, or a power to enact laws. The Legislature, then, under its general power of law making, can enact laws, and, under this inherent power, it can do nothing more. What, then, is a law? It is a rule of civil conduct, and, as such, prescribed for and attaching itself to the future actions of men. It must, from its very nature, be prospective; otherwise it cannot be a rule of civil conduct. It cannot attach itself to conduct, antecedent to the rule itself. It is impossible to form an idea of the rule of civil conduct, applicable to acts done antecedent to the rule itself. For at the time the particular past transaction took place, a law subsequently passed was not and could not, from the very nature of the case, be then an existing rule

governing such conduct. The conduct of the past must stand acquitted or condemned, be it lawful or unlawful when judged by those rules, and those only, which had an existence at the time the transaction took place. The future alone can be called upon to observe the dictates of every new rule.

Smith on Const. Const., Sec. 151.

The power vested in the municipality under the constitutional provision of the State Constitution already cited, is to make and enforce all such local, police, sanitary and other regulations as are not in conflict with general laws. As already observed, this is a legislative power of local character, and police in its nature. Under it regulations cannot be made that would infringe treaty rights secured to aliens resident in the United States, and under it the treaty right of a friendly alien to earn a living cannot be made subservient to the whim or caprice of local legislative bodies. To so hold would at once place it in the power of any local municipality, under the guise of such a regulation to proscribe and banish from their limits subjects of friendly alien powers, and thus violate the treaty obligations of the Federal Government, and involve it in responsibilities for the consequences attendant upon such violation.

In *Chy Lung* vs. *Freeman*, 2 Otto, 279, this Court observe:

"Individual foreigners, however distinguished "at home for their social, their literary, or their "political character, are helpless in the presence of

" this potent Commissioner. Such a person may
" offer to furnish any amount of surety on his own
" bond, or deposit any sum of money; but the
" law of California takes no note of him. It is
" the master, owner or consignee of the vessel
" alone whose bond can be accepted; and so a
" silly, an obstinate or a wicked Commissioner
" may bring disgrace upon the whole country, the
" the enmity of a powerful nation, or the loss of
" an equally powerful friend. While the occur-
" rence of the hypothetical case just stated may
" be highly improbable, we venture the assertion
" that if citizens of our own Government were
" treated by any foreign nation as subjects of the
" Emperor of China have been actually treated
" under this law, no Administration could with-
" stand the call for a demand on such Govern-
" ment for redress, or if this plaintiff and her
" twenty companions had been subjects of the
" Queen of Great Britain, can any one doubt that
" this matter would have been the subject of in-
" ternational inquiry, if not of a direct claim for
" redress. Upon whom would such claim be
" made? Not upon the State of California, for
" by our Constitution she can hold no exterior re-
" lations with other nations. It would be made
" upon the Government of the United States.
" If that Government should get into a difficulty
" which would lead to war or to suspension of in-
" tercourse, would California alone suffer, or all
" the Union? If we should conclude that a pe-
" cuniary indemnity was proper as a satisfaction

" for the injury, would California pay it, or the " Federal Government?

" If that Government has forbidden the States " to hold negotiations with any foreign nations, " or to declare war, and has taken the whole sub- " ject of these relations upon herself, has the " Constitution, which provides for this, done so " foolish a thing as to leave it in the power of the " States to pass laws whose enforcement renders " the general government liable to just reclama- " tions, which it must answer, while it does not " prohibit to the States the acts for which it is " held responsible? The Constitution of the " United States is no such instrument. The " passage of laws which concern the admission of " citizens and subjects of foreign nations to our " shores, belongs to Congress, and not to the " States. It has the power to regulate commerce " with foreign nations; the responsibility for the " character of those regulations, and for the man- " ner of their execution, belongs solely to the " national Government. If it be otherwise, a " single State can, at her pleasure, embroil us in " disastrous quarrels with other nations. We are " not called upon by this Statute to decide for or " against the right of a State, in the absence of " legislation by Congress, to protect herself by " necessary and proper laws against paupers " and convicted criminals from abroad, nor to lay " down the definite limit of such right, if it exist. " *Such a right can only arise from a vital necessity* " *for its exercise, and cannot be carried beyond the* " *scope of that necessity.*"

Applying this reasoning to the case in hand (and of its applicability, there can be little doubt), what pretense can there be for exercise of the power attempted in enactment of the ordinance here in question ?

XI.

Validity of the Ordinance.

The ordinance in question is in no sense just exercise of legislative power. It prescribes no rule of conduct ; it declares no rule of action for the guidance of anyone ; it amounts simply to the enunciation of *conditions* upon which the Board of Supervisors may or may not, *in their sovereign pleasure*, permit exercise of the business of carrying on a laundry. What are its requirements ? To secure the required permit, what must the applicant do ? The applicant must file with the Clerk of the Board of Supervisors a description of the premises on which he proposes to carry on the business ; he must obtain a certificate, signed by the Health Officer, that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with. What rule or criterion is there here prescribed for the guidance of the Health Officer ? How, or in what manner, is the applicant to act so as to obtain the certificate of the Health Officer ? Is he not left entirely at the discretion, the whim or

the caprice of that officer? Is there any rule or regulation, or any criterion, gauged by which it would be compulsory upon that officer to furnish the certificate, or complying with which the applicant could compel the officer to give it to him? The Health Officer is to see that the premises are properly drained. How properly drained? What rule, regulation or prescription is there for determining when they are properly drained? How determine when they are sufficiently drained? How ascertain that all the proper arrangements have been made for carrying on the business without injury to the sanitary condition of the neighborhood? Is it possible to more completely place the matter entirely subject to the arbitrary discretion of this officer? Nay, if he get the certificate of the Health Officer, he must still obtain the certificate of the Board of Fire Wardens, and to what effect? That the stoves and washing and drying apparatus, and the appliances for heating smoothing irons are in good condition. Is that all? No, but that *their use is not dangerous* to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of Order No. 1617, defining the fire limits of the City and County of San Francisco.

It is needless to enlarge upon the nature of this certificate. It is as completely within the power of the Board of Fire Wardens to grant or withhold it at their pleasure as is that of the Health Officer, and both are entirely at their pleasure. Do the requirements of this section prescribe any-

thing like a rule or regulation? Do they constitute a law? Do they constitute an ordinance? Do they prescribe a rule for the guidance of the persons who are called upon to conform their conduct to its requirements? Nay, after having secured these certificates, the applicant is still not entitled to the permit. The ordinance simply provides, that a permit shall not be granted without these certificates, but *it does not provide that upon their production, the Board of Supervisors shall be bound to grant the permit.* Even though the Health Officer and the Board of Fire Wardens may have granted their respective certificates, there is still no right in the applicant to compel issuance of the permit to him. By no process known to the law can the applicant, however meritorious, however carefully he may, in all respects, have complied with all rules and regulations, compel issuance of the prescribed permit. Is such a requirement, is such an ordinance, a law, rule or regulation? Does it involve any of the essential elements of a law, rule or regulation? It unquestionably does not.

Mayor of Baltimore vs. *Radecke*, 49 Md., 231.
Austin vs. *Murray*, 16 Pick., 124.
Darst vs. *People*, 51 Ill., 287.
Bates vs. *Dist. Columbia*, 1 McArthur, 448.
Yates vs. *Milwaukee*, 10 Wall. (U. S.), 505.
Ex parte Wall., 48 Cal., 314, 316.

Nor can the validity of this ordinance be upheld as a legitimate exercise of the police power. This

power rests in necessity, and as stated by this Court in *Chy Lung* vs. *Freeman, supra*, "*cannot be carried beyond the scope of that necessity.*"

While it is true that Courts have declined to define its boundaries, it is no less true that the criterion by which to gauge its extent is necessity. In determining the extent of such necessity, Courts will not be overcritical or nice in revising its exercise. Yet, like all other rights and powers, it must be taken and construed in connection with the purposes for which governments are framed and the rights and powers with which they are clothed.

In the language of the Declaration of Independence, "We hold these truths to be self-evi-
"dent, that all men are created equal; that they
"are endowed by their Creator with certain in-
"alienable rights; that among these are life, lib-
"erty and the pursuit of happiness, and to secure
"these rights governments are instituted among
"men, deriving their just powers from the consent
"of the governed; that whenever any form of
"government becomes destructive of these ends,
"it is the right of the people to alter or abolish it,
"and to institute new government, laying its
"foundation on such principles and organizing its
"powers in such form as to them shall seem most
"likely to effect their safety and happiness."

Upon these principles all governments inherently repose. They are primarily designed to secure to the governed protection and enjoyment of life, liberty and the pursuit of happiness. For this purpose, and to the extent necessary, their

powers may be justly co-ordinated, but they never can be so exercised as to be rendered subversive of the ultimate purpose of their institution. Upon no just principle, therefore, of constitutional law can it be admitted that the right to earn a livelihood in the exercise of an innocent and lawful vocation can be made dependent upon the pleasure of anybody or set of men within the bounds of any commonwealth. To so hold would be to simply subvert the purpose for which governments are instituted. There is no occasion for the existence of any such power. Its existence is incompatible with the exercise of the rights for the protection and enjoyment of which governments are instituted. It cannot, therefore, be that, under any constitutional system of government, there can exist any dormant police power under guise of the exercise of which the right of a man to exercise an innocent and lawful vocation can be made dependent upon the pleasure of any man or any set of men, any Board of Supervisors or any body of Legislators. The inherent right of man in exercise of an innocent and lawful vocation to earn a living is one of those personal rights enjoyed by all, secured to all and guaranteed under the provisions of the treaty to all subjects of the Emperor of China within the jurisdiction of the United States, and it is not in the power of the Board of Supervisors or of the Legislature of the State of California to impair, abridge or deprive any of the subjects of the Emperor of China of the right to lawfully exercise it.

In view of the admitted facts appearing in this record, the Court can readily perceive how utterly incompatible existence of any such power is with the proper discharge on the part of the Federal government of its treaty obligations to the Emperor of China. It stands here admitted, that this legislation was not designed for any sanitary or police purpose; that it was exclusively aimed at the subjects of the Emperor of China, and aimed at them for a forbidden purpose. It was designed to proscribe, to banish them from the State, and from the Union. It was designed to defeat and to deny them the very rights, to the enjoyment of which, under the treaty, they are entitled. It can readily be perceived that if this power exist, with respect to laundries, its existence must be equally indisputable with respect to any other pursuit or vocation in which the subjects of the Emperor of China may engage, and if such power exist, it is apparent that the right of the Federal Government to enter into treaties of amity, to guaranty the right of migration and emigration can be wholly set at naught; for, under this power, while the Federal Government is authorized to extend the right to immigrate, and exercise any just and lawful pursuit within its jurisdiction, the Board of Supervisors is, at the same time, clothed with the power to render nugatory enjoyment of the very right thus accorded under treaty. *The alien can exercise no political powers. Its exercise rests exclusively with citizens* (*Walther* vs. *Rabolt*, 30 Cal., 188), and it requires no argument to show that interest,

passion, prejudice or any other unworthy motive may, at any moment, prompt proscriptive legislation that would banish all aliens from the jurisdiction of the United States, despite any treaty of the Federal Government guaranteeing them the right there to remain and exercise any lawful pursuit or calling.

As to such legislation in California, we refer the Court to—

People vs. *Downer*, 7 Cal., 169.
Lin Sing vs. *Washburne*, 20 Cal., 534.
State vs. *Steamship Constitution*, 42 Cal., 579.
Chy Lung vs. *Freeman*, 2 Otto, 275.
The Laundry Ordinance, 7 Sawyer (C. C. R.), 526.
Parrot Case, 6 Sawyer, 349.
In re Wom Yueng, 6 Sawyer, 237.
In re Ah Chong, 6 Sawyer, 451.
Ah Kow vs. *Nunan*, 5 Sawyer, 552.
Constitution of California, Article XIX.

Upon another ground, we respectfully submit this ordinance is equally invalid, and that is, that it is an unreasonable ordinance.

Mayor vs. *Winfield*, 8 Humphrey, 709.
White vs. *Mayor*, 2 Swan, 372.
Ward vs. *Mayor*, 8 Baxter, 230.
Brills vs. *Mayor*, 8 Baxter, 248.
Waters vs. *Leech*, 3 Arkansas, 115, 117.
State vs. *Jersey City*, 5 Dutcher, 175.
State vs. *N. L. Gas Co.*, 12 Penn. St., 323.

Ex parte Burnett, 30 Alabama, 467.
Craig vs. *Burnett*, 32 Alabama, 735.
Corrigan vs. *Gage*, 68 Mo., 541.
Tugman vs. *Chicago*, 78 Ill., 407.
Judson vs. *Reardon*, 4 Minn., 435.
St. Charles vs. *Noble*, 51 Mo. 124.
Clason vs. *Milwaukie*, 50 Wisconsin, 320.
Lake Hill vs. *Rose Hill Cemetery*, 70 Ill., 191.
Ex parte Frank, 52 Cal., 609.
Cooley's Constitutional Limitations, 241.
1 Dillon Municipal Corporations, Sec. 332.

XII.

JURISDICTION.

Section 753 of the Revised Statutes of the United States provides that :

" The writ of *habeas corpus* shall in no case extend to " a prisoner in jail unless where he is in custody under " or by color of the authority of the United States, or is " committed for trial before some Court thereof ; or is in " custody for an act done or committed, in pursuance of " a law of the United States, or of an order, process or " decree of a Court or Judge thereof; or is in custody in " *violation of the Constitution, or of a law or treaty of the* " *United States ;* or, being a subject or citizen of a for- " eign State and domiciled therein, is in custody for an " act done or committed under any alleged right, title, " authority, privilege, protection or exemption, claimed " under the commission, or order, or sanction of any for- " eign State, or under color thereof, the validity and effect

" whereof depend upon the law of nations, or unless it " is necessary to bring the prisoner into Court to testify."

The portion of the language of this section, under which jurisdiction of the Circuit Court to award the writ is claimed, is in these words: " Or " is in custody in violation of the Constitution, or " of a law or treaty of the United States." The contention upon this point is, that subjects of the Emperor of China in California under the Constitution of the United States and the provisions of the Burlingame Treaty, to which the attention of the Court has already been called, are guaranteed the right to pursue all lawful vocations in a lawful manner, and that the ordinance in question and the judicial proceedings founded thereon, are in invasion of the rights thus secured, redress for which may legally be had on writ of *habeas corpus* awarded by the Circuit Court.

Ex parte Bridges, 2 Woods (C. C.), 430.
In re Wong Yueng Quy, 6 Sawyer, 242.
Ex parte Turner, 3 Woods (C. C. R.), 610.

To recapitulate:

1. The United States had constitutional power and authority to enter into the treaty with the Emperor of China, already referred to, and that treaty is the supreme law of the land.

2. That treaty guarantees to the petitioner the right to exercise his vocation, and the ordinance in question is in violation of the provisions of the treaty and the Constitution of the United States.

3. That, being held in custody for violation of the provisions of the ordinance, thus in contravention of the provisions of the treaty, he is in custody in violation of the Constitution of the United States, and of the provisions of the treaty.

4. That, being thus unlawfully restrained of his liberty, the Circuit Court had lawful jurisdiction to award the writ and discharge the petitioner.

All of which is respectfully submitted.

HALL MCALLISTER,
Counsel for Petitioner.

108-556

OFFICE SUPREME COURT U. S.
FILED
MAR 19 1883
JAMES H. McKENNEY, Clerk.

No 1230

IN THE

SUPREME COURT

OF THE

UNITED STATES.

Ex Parte
TOM TONG
On Habeas Corpus.

Brief for Respondent.

L. D. LATIMER AND
J. D. SULLIVAN,
District Attorney.
Against the Writ.

Barry, Baird & Co., Steam Printers, 419 Sacramento Street.

3. That, being held in custody for violation of the provisions of the ordinance, thus in contravention of the provisions of the treaty, he is in custody in violation of the Constitution of the United States, and of the provisions of the treaty.

4. That, being thus unlawfully restrained of his liberty, the Circuit Court had lawful jurisdiction to award the writ and discharge the petitioner.

All of which is respectfully submitted.

HALL MCALLISTER,
Counsel for Petitioner.

108-1-16

OFFICE SUPREME COURT U. S.
FILED
MAR 19 1883
Clerk

No 1230

IN THE

SUPREME COURT

OF THE

UNITED STATES.

Ex Parte
TOM TONG
On Habeas Corpus.

Brief for Respondent.

L. D. LATIMER AND
J. D. SULLIVAN,
District Attorney.
Against the Writ.

Barry, Baird & Co., Steam Printers, 419 Sacramento Street.

Supreme Court of the United States.

EX PARTE TOM TONG ON HABEAS CORPUS.

I.

The decision of this case involves the consideration and determination of the question whether the Ordinance of the City and County of San Francisco, for non-compliance with the provisions of which the petitioner has been arrested, is valid, or whether it is void and of no effect.

It is claimed on behalf of petitioner that the Ordinance is void because (1) it is in contravention of what is known as the Burlingame Treaty between the United States and China, (2) prohibited by the Fourteenth Amendment to the Constitution of the United States, and (3) unreasonable in its requirements.

All of these propositions are controverted; we deny that any provision of this Ordinance is in conflict with either the Constitution of the United States or the Burlingame treaty, and we affirm that its objects are strictly legal and praiseworthy,

and the means prescribed for the attainment of those objects reasonable and properly chosen.

II.

Upon the questions arising in this case, the learned judges who heard it in the Circuit Court, have differed in opinion. We shall, for convenience, consider them in the order in which they are presented in the certificate of division.

III.

The facts stated in the Petition did not justify the issuance of the Writ.

After eliminating the irrelevant matters, such as the allegations concerning the "League of Freedom," etc., there is nothing to show that the petitioner is illegally restrained of his liberty. The bare averment that the authority under which he is in custody is in conflict with the Constitution of the United States, or with a Treaty or Federal Law, is wholly insufficient, in the absence of a statement of *facts* showing such conflict.

IV.

The petition and the return to the writ showed that the petitioner had been arrested and was detained in custody by virtue of due criminal proceedings against him for a violation of the provisions of Order No. 1691, of the Board of Super-

visors of the City and County of San Francisco, and whether petitioner was entitled to his discharge upon the facts thus shown depends, of course, upon the validity or invalidity of said Order, in so far as it may be found in conflict or otherwise with any provision of the Federal Constitution, Treaty or Statute. For we contend that the Circuit Court had no power to consider the question whether said Order was unreasonable, or in violation of the Constitution of the State of California.

In the case of *Calder* v. *Bull,* the Court says: "I am fully satisfied this Court has no jurisdiction to decide that any law of the State Legislature, contrary to the Constitution of the State is void. The Courts of the State are the proper tribunals to decide whether laws contrary to the Constitution thereof are void."

Calder v. *Bull,* 35 Dallas, 386.
Satterlee v. *Matthewson,* 2 Peters, 380.
Jackson v. *Lamphire,* 3 Peters, 289.

V.

But conceding, for the sake of argument, that the Court had the right to determine whether said Order was reasonable or not, we contend that the Order is reasonable, and within the powers of the Supervisors to enact.

The object of the Order in question was to guard the city against the danger of fire, resulting from the use of improper apparatus and buildings, in carrying on the business of public laundries and wash houses, and also to maintain proper sanitary regulations connected with the carrying on of said business in the densely populated portions of the City of San Francisco. To accomplish these purposes the parties proposing to carry on said business, are required to obtain a license, and as conditions thereto, to file with the Board of Supervisors certificates from the proper officials showing that proper precautions had been taken against fires, and for the maintenance and cleanliness in and about the premises to be used in the carrying on of such business. Licenses are to be issued only after permission shall have been granted by the Board after such certificates have been filed. It seems to us there is nothing in the remotest degree unreasonable or improper in these requirements; but that, on the contrary, they are wisely calculated to secure the objects of the Order.

VI.

This Order was one which the Board of Supervisors had the power to pass, under the Constitution and Laws of the State of California.

The Constitution, Art. 11, Sec. 11, declares that:

"Any city, town, or township may make and enforce, within its limits, all such local, police, sanitary and other regulations as are not in conflict with general laws."

The Board of Supervisors of San Francisco are expressly authorized by the Consolidation Act, Sec. 74, Subdivision 9, "to make all needful regulations for protection against fire," and by Act of Legislature, passed April 25, 1863, (Laws of 1863, p. 540) "to make all regulations which may be necessary or expedient for the preservation of the public health and the prevention of contagious diseases."

VII.

That the right to enact such laws and regulations as that in question belongs to what is known as the police powers of the State, is well settled, and that the Constitution of the United States confers no power upon Congress or the Federal Courts to interfere with the exercise of those powers, is equally well settled.

See Slaughter House Cases, 16 Wallace, 36.

Gibbons vs. *Ogden*, 9 Wheat., 203.

City of New York vs. *Miller*, 11 Peters, 102.

United States vs. *DeWitt*, 9 Wall., 41.

Such powers, as was said by Chief Justice Taney, in the License cases, 5 How., 583, "are nothing more nor less than the powers of government inherent in every sovereignty." * * * "And when the validity of a State law * * * is drawn in qnestion in a judicial tribunal, the power to pass it cannot be made to depend upon the motives that may be supposed to have influenced the Legislature."

VIII.

As to the subject matter of this order the learned Justices Field and Sawyer, who sat in the Circuit Court, Ninth Circuit *In Re* Quong Woo on Habeas corpus, used the following language:

"If it (the business of a laundry) be conducted *in a manner that is offensive or dangerous, the Supervisors may direct the manner to be changed, and prescribe regulations for its prosecution.* If the building in which it is carried on is, by its structure, form or material unsafe, the Supervisors may, by proper proceedings, have it altered or removed. *This* power the Supervisors possess with reference to all avocations and the buildings in which they are prosecuted. All business must be so conducted as not to endanger the public safety or health."

(Pacific Coast Law Journal, Aug. 12th, 1882.)

This order is strictly within the line of the au-

thority thus enunciated. Besides, every intendment of the law is in favor of the validity of such regulations.

Dillon on Mun. Corp., Section 420.
Baltimore vs. *Chenet*, 22 Md., 449.

IX.

The Ordinance is general in its nature.

It applies to all classes, and makes no distinctions of race, color nor nationality. It, therefore, conflicts in no manner with the Fourteenth Amendment, or Section 1,977 of the U. S. Revised Statutes, or Article 6 of the Burlingame Treaty. It applies as well to whites as to blacks, to Frenchmen or Americans, as to Chinese.

X.

The onus is on petitioner to show, and to show clearly, wherein this order is obnoxious to any higher authority, whether in the State or in the United States.

If he claim it to be so unreasonable as to be void, he must show wherein it is so fatally defective. To warrant the Court in setting aside a law, and particularly a law of this kind, belonging to the police powers of the State upon the ground of its unconstitutionality, the case must be so clear that no reasonable doubt can be said to exist.

See Sedgwick, Stat. and Const. Law, 552, (2 Ed.)
Fletcher vs. *Peck*, 6 Cranch, 128.
U. S. Bank vs. *Halstead*, 10 Wheat., 53.
Ogden vs. *Sanders*, 12 Wheat., 294.
Parsons vs. *Bedford*, 3 Peters, 433.

XI.

Every Statute is presumed to be constitutional.

The Courts ought not to declare one to be unconstitutional unless it is clearly so. If there is doubt, the expressed will of the Legislature should be sustained.

Munn vs. *Illinois*, 94 U. S. R., 123.

For instances in which such powers have been exercised, see,

Slaughter House Cases, *supra.*
Vanderbilt vs. *Adams*, 7 Cow., 351.
Ex parte Shrader, 33 Cal., 279.
City of New York vs. *Miln*, *supra.*
Godard, Petitioner, 16 Pick., 504.
Hine vs. *City New Haven*, 40 Conn., 478.
Monroe vs. *Hoffman*, 29 La. An., 651.

Such instances might be multiplied. No case is known to us wherein a regulation such as the one

in question, has been held invalid. There is nothing which brings it in conflict with the Fourteenth Amendment, to which constant appeal is made, when all other expedients have proved vain. The general objects and purposes of that amendment are thus stated in the case of *Missouri* vs. *Lewis*, 101 U. S., 30.

"These are to extend United States citizenship to all natives and naturalized persons, and to prohibit the States from abridging their privileges or immunities, and from depriving any person of life, liberty or property, without due process of law, and from denying any person within their jurisdiction the equal protection of the laws. It contemplates persons and classes of persons. *It has not respect to local and municipal regulations that do not injuriously affect or discriminate* between persons or classes *of persons within the places* or municipalities for which such regulations are made."

XII.

As to the fifth question upon which the learned Justices are divided in opinion, we submit that the intent and scope of the ordinance is, that plain, certain facts are required in the manner and mode prescribed. When such facts are made to appear, the Board cannot arbitrarily nor capriciously grant, nor withhold permission for a license to issue, such

an attempt would be corrected by the Courts, and the Board, by mandamus, compelled to do its duty under the law.

The action of the Board is made to depend upon facts, and its discretion and judgment upon those facts must be exercised fairly. It is not to be presumed that they will act unfairly.

XIII

If this ordinance cannot be made effective, then we think the power given the corporation is taken from it, viz., the right and power of a municipal corporation (which ought not to be denied), to pass all laws necessary to carry into effect the powers delegated to it by the Legislature of the State. The enactment of this ordinance was the exercise of a direct right and power, which such corporations derive from the State to make such by-laws and ordinances as are required for the welfare and governmeut of the inhabitants of the city. The existence of such right cannot be denied.

Tugman vs. *Chicago*, 78 Ill., 407.
Ex parte Bennett, 30 Ala., 467.

XIV.

This ordinance provides that the permit shall not be granted without certain certificates from

the Health Officer and Fire Warden, and if it is urged, that because it does not in direct words provide that upon their production, the Board of Supervisors shall be bound to grant the permit, then, we say, we have sufficiently answered this proposition; that the law would compel it to do its duty. The expression, in direct words, of its obligation to issue the permit, would have given a complaining party no greater protection in the law; he has its protection already by complying with the requirements of the ordinance.

XV.

It has been well said in reference to grants of power to municipal corporations, that as to the *degree of necessity*, for municipal legislation on subjects committed to their charge, the Mayor and City Council are the exclusive judges, while the selection of the *means and manner* (contributing to that end) *of exercising the powers which they may deem requisite to the accomplishment of the objects of which they are made the guardians, is committed to their sound discretion.*

Harrison vs. *Mayor, &c.*, 1 Gill, 264.
Mayor, &c., vs. *Radick*, 49 Maryland, 228.

In which latter case the Court say: "We are of the opinion *that there may be a case in which an ordinance passed under grants of power, like those we*

have cited, is so unreasonable, so arbitrary, oppressive or partial, as to raise the presumption that the Legislature never intended to confer the power to pass it, and setting it aside as a plain abuse of authority."

XVI.

Order No. 1617, which makes regulations concerning the use of buildings within the limits of the City of San Francisco; also, Order No. 1670, prohibiting the maintenance of open fires in houses, and other ordinances, including the one in question, seem necessary and important to the health and safety of the people of this city.

With confidence in the validity of Order No. 1691, we submit the same should be sustained.

Respectfully submitted,

L. D. LATIMER, AND
J. D. SULLIVAN,
District Attorney,
Against the Writ.

The following is a correct copy of Order No. 1691:

Order No. 1691.—Regulating the licensing, establishment and maintenance of public laundries and public wash-houses within certain limits in the City and County of San Francisco.

WHEREAS, The indiscriminate establishment of public laundries and public wash-houses where clothes and other articles are cleansed for hire, is injurious and dangerous to public health and public safety, and prejudicial to the well-being and

comfort of the community and depreciates the value of property in those neighborhoods where such public laundries and such public wash-houses are situate.

Under and in conformity to the authority vested by Section 11 of Article XI, of the Constitution of the State of California, and of Subdivision 9 of Section 74 of an Act, entitled "An Act to repeal the several charters of the City of San Francisco, to establish the boundaries of the City and County of San Francisco and to consolidate the government thereof," approved April 19, 1856, and the several Acts amendatory thereto and supplementary thereof.

The People of the City and County of San Francisco do ordain as follows:

SECTION I. On and after the first day of January, 1883, it shall be unlawful for any person or persons to establish, maintain or carry on the business of a public laundry, or a public wash-house, where clothes or other articles are cleansed for hire, within that portion of the City and County of San Francisco lying and being within the following boundaries: commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement, without having first obtained a license or permit therefor, duly granted by resolution of the Board of Supervisors

SECTION 2. On and after the first day of January, 1883, the license collector of the City and County of San Francisco shall not issue a license to any person or persons proposing to carry on the business named in Section 1 of this order, in that portion of the city lying and being within the boundaries, as described in said Section 1 of this order, until he, she or they have obtained a certified copy of the resolution, as provided in Section 1 of this order.

SECTION 3. Before any license or permit shall be granted for carrying on the business named in Section 1 of this order,

there must be filed with the Clerk of the Board of Supervisors an accurate description and location of the premises for which the license is applied; also a certificate, signed by the Health Officer of the City and County of San Francisco, that said premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood, have been complied with, and particularly that the provisions of Section 4, of Order No. 1666 of this Board, have been complied with. Also, a certificate signed by the Board of Fire Wardens of the City and County of San Francisco, that the stoves, washing and drying apparatus, and the appliances for heating smoothing irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of Order No. 1617, defining "the fire limits of the City and County of San "Francisco, and making regulations concerning the erection "and use of buildings in said City and County," and Order "No. 1670, prohibiting the kindling, maintenance and use of "open fires in houses."

SECTION 4. It shall be the duty of the Health Officer, and also of the Board of Fire Wardens, respectively, upon the application of any person or persons proposing to open or conduct the business of a public laundry, within that portion of this City and County designated and described in Section 1 of this order, to inspect the premises in which it is proposed to carry on said businesss, or in which said business is being carried on, with a view to ascertaining whether the said premises are provided with proper drainage and sanitary appliances, also whether the provisions of Orders No. 1617 and 1670 of this Board have been complied with, and if found in all respects satisfactory, then to issue to said applicants the certificates provided for in Section 1 of this order. No charge, whatever, shall be made, or compensation or fee collected or received for the performance of any of the services required by the provisions of this order, in the inspection of premises or the issuance of a certificate, but all such services shall be performed free of charge.

SECTION 5. No person or persons owning or employed in the public laundries or wash houses provided for in Section 1

of this order, shall wash or iron clothes between the hours of 10 o'clock P. M, and 6 o'clock A. M., nor upon any portion of that day known as Sunday.

SECTION 6. No person or persons engaged in the laundry business, within that portion of this city described in Section 1 of this order, shall permit any person suffering from any infectious or contagious disease to lodge, sleep or remain within or upon the premises used by him, her or them for the purposes of a public laundry.

SECTION 7. Any person or persons establishing, maintaining or carrying on the business of a public laundry or a public washhouse, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in Section 1 of this order, without first having obtained permission from the Board of Supervisors, and the license from the License Collector, provided for in Subdivision XX, of Section 10, of Order No. 1589 of this Board shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment not more than six months, or by both, and any person who shall violate the provisions of Section 5 or 6 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $5 nor more than $50, or by imprisonment for not more than one month, or by both such fine or imprisonment.

The following is a correct copy of the Complaint:

In the Police Judge's Court No. 2, of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

TOM TONG.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco, }

"Personally appeared before me, the 15th day of January, 1883 James Galbraith, who, on oath, makes complaint, and deposes and says, that on the 13th day of January, A. D, 1883, in the City and County of San Francisco, State of California, the crime of misdemeanor was committed, to wit: by Tom

Tong (whose real name is unknown to this complainant), who then and there, at No. 621 California St, between Dupont and Kearney Sts., did wilfully and unlawfully establish, maintain and carry on the business of a public laundry and public wash-house, where clothes and other articles were then and there cleansed for hire, without first having obtained a license or permit therefor, duly granted by resolution of the Board of Supervisors of said City and County of San Francisco; said laundry and wash-house then and there being within that portion of said City and County of San Francisco, described as follows, to wit: Commencing at the intersection of Gough street, with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street, in a westerly direction, to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement, thereby violating the provisions of Section 1 of Order 1691 of the Board of Supervisors of said City and County of San Francisco, contrary to the form, force and effect of the Statute in such cases made and provided, and against the peace and dignity of the people of the State of California and this complainant upon oath, accuses the said Tom Tong of having committed the said crime, and prays that the said accused may be brought before a magistrate and dealt with according to law.

(Signed)

JAMES GALBRAITH.

Subscribed and sworn to before me the 15th day of January, 1883.

JAMES LAWLOR,

Judge of the Police Judges Court No. 2,
Of the City and County of San Francisco."

STIPULATION.

It is stipulated that the foregoing ordinance of the Board of Supervisors of the City and County

of San Francisco, also, the complaint of James Galbraith, upon which petitioner was arrested are full, true and correct copies of the original ordinance and complaint respectively; and in the consideration of the question involved, the Supreme Court of the United States will refer to them as the complete and correct ordinance and complaint in these proceedings.

HALL McALLISTER,
Counsel for Petitioner.

L. D. LATIMER, AND
J. D. SULLIVAN,
District Attorney,
Against the Writ.

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